Supreme Court, U.S.
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No. 04-296

In the Supreme Court of the United States

PETER M. HAGAN,

Petitioner,

v.

WARNER/ELEKTRA/ATLANTIC CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did Petitioner Hagan come forward with sufficient evidence to establish pretext in this discrimination case?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

The parties to this proceeding are Petitioner Peter M. Hagan and Respondent Warner Elektra Atlantic Corporation.

Respondent Warner Elektra Atlantic Corporation ("WEA") had parent companies of The Warner Music Group, Inc. and AOL Time Warner, Inc. while this case has been pending. WEA's parent company is now WMG Parent Corporation.

TABLE OF CONTENTS

Question Presented i

Parties to the Proceeding and Corporate Disclosure Statement ii

Table of Contents iii

Table of Authorities vi

Opinions Below 1

Statement of Jurisdiction 1

Statutory Provisions Involved 1

Introduction 2

Statement of the Case 2

Reasons for Denying the Petition 5

I. The Sixth Circuit's Decision In This Case Is Unpublished And Therefore Has No Precedential Value 5

II. Petitioner Waived The Second Issue Presented To This Court 6

III. This Case Does Not Warrant Review Because A Central Claim In The Case Arises Under Ohio Law 6

IV. The Sixth Circuit's Unpublished Decision Is Correct And Reflects Uniformity In The Circuits, Not a Split 7

A. WEA Is Required By Federal Law To Have An Affirmative Action Plan And, Thus, No Discrimination Is Shown 7

B. There Is No Split In The Circuits On The Issues Before The Court 9

C. Petitioner's Arguments About Validity Are Both Irrelevant And Wrong 12

Conclusion 14

Appendix

Appendix A - Excerpts Deposition of Peter M. Hagan, Jr., Pages 1, 133, 140, 181-183, 212-213, 216-219, 236, 376-380, 491 - Dated 5/30/01 . . . . . 1a

Appendix B - Excerpts Deposition of Denny Schone, Pages 42-43, 70-71, 86-89, 130-131, 174, 177-178, 264-265 - Dated 10/26/01 . . . . . 20a

Appendix C - Excerpts Deposition of Susanne Costello, Pages 1, 7, 9, 16, 24-25 - Dated 6/6/01 . 37a

Appendix D - Excerpts Deposition of Susan Victoria Arnold, Pages 1, 62 - Dated 7/9/01 . . . . . 44a

Appendix E - Excerpts Deposition of Raymond S. Milanese, Pages 1, 35-36, 128-129, 164-166, 182-188, 217-220, 232 - Dated 6/8/01 . . . . . 47a

Appendix F - Excerpts Deposition of Richard L. Froio, Pages 1, 108-113 - Dated 6/6/01 . . . . . 66a

Appendix G - Deposition of David Mount, Pages 1, 61-65 - Dated 7/10/01 . . . . . 73a

Appendix H - Reply in Support of Motion for Summary Judgment, Exhibit A - Catalogue of Misstatements of Fact 80a

Appendix I - Affirmative Action Plan - Dated 3/31/97 . . . . . 96a

Appendix J - Excerpts Final Brief of Plaintiff-Appellant, Peter M. Hagan, Jr., Pages 1-2 . . . . . 100a

Appendix K - Plaintiff's Memorandum Contra Defendant's Motion for Summary Judgment, Pages 1, 40 . . . . . 103a

Appendix L - Declaration of Dennis Schone - Dated 11/12/01 . . . . . 106a

TABLE OF AUTHORITIES

Cases

Bass v. Bd. of County Commr's Orange County, Fla., 256 F.3d 1095 (11th Cir. 2001), *reh'g en banc denied*, 273 F.3d 1117 (11th Cir. 2001) 9

Brown v. McLean, 159 F.3d 898 (4th Cir. 1998), *cert. denied*, 526 U.S. 1099 (1999) 13

Cerrato v. San Francisco Community College Dist., 26 F.3d 968 (9th Cir. 1994) 8, 10

Christensen v. Equitable Life, 767 F.2d 340 (7th Cir. 1985), *cert. denied*, 474 U.S. 1102 (1986) 8

Cunico v. Pueblo Sch. Dist No. 60, 917 F.2d 431 (10th Cir. 1990) 10

Denney v. City of Albany, 247 F.3d 1172 (11th Cir. 2001) 7, 10

Husty v. U.S., 282 U.S. 694 (1931) 6

Johnson v. Transp. Agency, Santa Clara County, Calif., 480 U.S. 616 (1987) 13

Manufacturers' Indus. Relations Ass'n v. East Akron Casting Co., 58 F.2d 204 (6th Cir. 1995) 5

McQuillen v. Wisconsin Educ. Assoc. Council, 830 F.3d 659 (7th Cir. 1987), *cert. denied*, 485 U.S. 914 (1988) 13

Messer v. Meno, 130 F.3d 130 (5th Cir. 1997), *cert. denied*, 525 U.S. 1067 (1999) 9

Murdock v. Memphis, 87 U.S. 590 (1875) 6

Reed v. Agilent Technologies, Inc., 174 F. Supp. 2d 176 (D. Del. 2001) 8, 9

Sampson v. Secretary of Transportation, 1999 U.S. App. LEXIS 14142 (6th Cir. June 23, 1999) . . . 10

Schurr v. Resorts Int'l Hotel, Inc., 196 F.3d 486 (3d Cir. 1999) 9

Stock v. Univ. Foods Corp., 1994 U.S. App. LEXIS 771 (4th Cir. Jan. 19, 1994), *cert. denied*, 513 U.S. 813 (1994) 9-10

Taxman v. Board of Educ. of the Township of Piscataway, 91 F.3d 1547 (3d Cir. 1996), *cert. dismissed*, 522 U.S. 1010 (1997) 9, 13

Statutes, Regulations, and Order

29 U.S.C. Sec. 2000e et seq. (Title VII) 6, 14

O.R.C. § 4112 6

O.R.C. § 4112.02(A) 1

O.R.C. § 4112.99 1

41 C.F.R. § 60-2.1(b)(1)(i) 7

41 C.F.R. § 60-2.1(c) 14

41 C.F.R. § 60-2.10(a)(1) 8

41 C.F.R. § 60-2.10(a)(3) 8

41 C.F.R. § 60-2.16 8

Executive Order § 11246 7

OPINIONS BELOW

Respondent concurs with the statement of the Opinions Below provided by Petitioner.

STATEMENT OF JURISDICTION

Respondent concurs with the Statement of Jurisdiction provided by Petitioner.

STATUTORY PROVISIONS INVOLVED

In addition to the statutory provisions provided by Petitioner, Respondent references the following statutory provisions in its Brief in Opposition.

Ohio Revised Code § 4112.02(A) (2004):

> It shall be an unlawful discriminatory practice for any employer, because of race, color, religion, sex, national origin, disability, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

Ohio Revised Code § 4112.99 (2004):

> Whoever violates this chapter is subject to a civil action for damages, injunctive relief, or any other appropriate relief.

INTRODUCTION

Petitioner Hagan alleged that his employer, WEA, intentionally discriminated against him. In an unpublished, unanimous decision, the Sixth Circuit affirmed the District Court's grant of summary judgment in this case. The Sixth Circuit held that no reasonable jury could determine that Petitioner Hagan could establish pretext in this discrimination case. Not a single judge within the Sixth Circuit requested a vote on Hagan's motion for en banc review. (Petition, Apx. 1a-1aa).

This Court should not accept certiorari in this case because: (1) the Sixth Circuit's decision is unpublished and therefore not precedent; (2) Hagan waived the second issue he presents for review; (3) a substantial portion of this case (Hagan's 1995 claims) deal exclusively with a question of Ohio law; and (4) the circuit courts are uniform, not split, that an affirmative action plan is irrelevant where the challenged decisions were not made pursuant to this plan.

STATEMENT OF THE CASE

Petitioner Hagan previously explained this case contained a "vast documentary and testimonial record." (Petition, Apx. 60a). It is a factually complicated case because Hagan is challenging four employment decisions made by different decisionmakers at his former employer, WEA, a music

distributor.[1] Hagan, a white man, claims that in 1995 and 1999 his white male supervisors discriminated against him because he is white and male.

First, Hagan, claims that Denny Schone, another white man, should have promoted Hagan to run WEA's Cleveland office in 1995. Hagan claims to be the victim of reverse discrimination under Ohio law because Schone selected a black man to run the office.

The evidentiary record demonstrates that Schone did not elevate Hagan into the top position in Cleveland because: (1) WEA's top customer in Cleveland asked that Hagan not be put in charge of the Cleveland office because he had not been visible enough with that customer; (2) Schone questioned Hagan's judgment after Hagan dressed up as Adolf Hitler at a WEA customer event; (3) the outgoing head of WEA's Cleveland office recommended against Hagan; and (4) Hagan

---

[1] Like his filings in the lower courts, Hagan's Petition contains statements that are either incorrect, overstated, or not supported by the record. (*See* Opposition, Apx. 80a). For instance, citing a single newspaper article that does not even mention WEA, Hagan writes: "WEA and other record companies were also under intense public pressure from Jesse Jackson and the Rainbow Coalition to hire more minority individuals into management." (Petition, 4). In reality, none of the decisionmakers in this case had seen this newspaper article or heard about its subject matter. (Schone Dep., Opposition, Apx. 34a-35a); (Milanese Dep., Opposition, Apx. 61a-63a).

never expressed real interest in the job.[2] (Petition, Apx. 7a). In sum, even Hagan admits that his claim regarding the 1995 decision is based upon "total" speculation. (Hagan Dep., Opposition Apx. 18a-19a). Viewing this evidence, the Sixth Circuit found no evidence of pretext.

Four years later, WEA decided to close its Cleveland office. Unlike the great majority of Cleveland employees who lost their job in this reduction-in-force, Hagan received an offer of continued employment. Despite this offer, Hagan believes that he was targeted for removal from WEA. (Hagan Dep., Opposition Apx. 6a-9a). He admits, however, that he does not know if he was targeted based upon his race or sex. (*Id.*)

Specifically, Hagan's claim is that WEA discriminated against him by not offering him three other positions in other cities. Hagan never applied to the decisionmaker for these positions. (Milanese Dep., Opposition Apx. 51a-53a); (Hagan Dep., Opposition Apx. 9a-11a); (Costello Dep., Opposition Apx. 40a-43a). The positions were either occupied by or awarded to employees who had a close,

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[2] Hagan writes in his Petition that he has performed "very well." (Petition, 5). The record evidence simply does not support this statement. (Schone Dep., Opposition, Apx. 25a-29a, 31a-32a); (Schone Decl. ¶ 2, Opposition, Apx. 106a); (Froio Dep., Opposition, Apx. 66a-72a). In contrast, Hill had exhibited a passion for the job, had passed up a number of other promising opportunities to pursue the job in Cleveland, and had a college degree which Schone considered a plus. (Schone Dep., Opposition, Apx. 23a-25a, 29a-31a).

working relationship with the decisionmakers.[3] (Milanese Dep., Opposition Apx. 48a-60a, 64a-65a); (Hagan Dep., Opposition Apx. 11a-13a); (Costello Dep., Opposition Apx. 41a-43a). In contrast, the decisionmakers barely knew Hagan. (*Id.*)

Furthermore, Hagan admitted at deposition that he lacked the fundamental qualifications to perform two of the three positions at issue. (Hagan Dep., Opposition Apx. 13a-18a). In addition, the positions that Hagan is now claiming he should have received actually paid less than the jobs that were offered to him after the closing of the Cleveland office. (Petition, Apx. 41a). Consequently, the District Court and the Sixth Circuit concluded that there was not sufficient evidence for Hagan to prove intentional discrimination.

REASONS FOR DENYING THE PETITION

I. The Sixth Circuit's Decision In This Case Is Unpublished And Therefore Has No Precedential Value.

Hagan is challenging an unpublished Sixth Circuit decision that has no precedential value. *See Manufacturers' Indus. Relations Ass'n v. East Akron Casting Co.*, 58 F.2d 204, 208 (6th Cir. 1995). Even if the decision were otherwise appropriate for review, it is not binding authority on any future court and cannot create a split in the circuits.

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[3] Hagan writes in his Petition that Hill performed "very poorly in his job." (Petition, 3). While Hagan and his friends did not like Hill, this was not the perception of the person who mattered, Hill's supervisor, who "thought the world of Dale Hill." (Milanese Dep., Opposition Apx. 49a-50a).

II. Petitioner Waived The Second Issue Presented To This Court.

Hagan asks this Court to consider the appropriate standards lower courts should use in determining whether affirmative action plans are valid. (Petition, i). Hagan never directly addressed this issue before the Sixth Circuit, and consequently the Sixth Circuit never had the opportunity to rule upon it. (Opposition, Apx. 102a). Consequently, this issue has been waived. *Husty v. U.S.*, 282 U.S. 694 (1931).

III. This Case Does Not Warrant Review Because A Central Claim In The Case Arises Under Ohio Law.

Hagan conceded in the District Court that he had not met Title VII's statute of limitations to challenge WEA's 1995 decision. (Opposition, Apx. 105a). Hagan's discrimination claim challenging WEA's decision in 1995 is based solely upon the Ohio Civil Rights Act, § 4112. While Ohio law looks to federal law for guidance in discrimination cases, disposition of Hagan's 1995 claims ultimately rests upon Ohio law. This Court should not pursue review where resolution of a substantial portion of the case involves the application of the law of a single state. *See Murdock v. Memphis,* 87 U.S. 590, 626 (1875) ("the state courts are the appropriate tribunals, as this court has repeatedly held, for the decisions of questions arising under the local law, whether statutory or otherwise.").

IV. The Sixth Circuit's Unpublished Decision Is Correct And Reflects Uniformity In The Circuits, Not A Split.

Hagan bases his entire Petition upon WEA's affirmative action plan. In his Petition, Hagan implies that WEA, on its own initiative, adopted an affirmative action plan for some sort of nefarious reason. (Petition, 4, 7). Hagan argues to this Court that because WEA has an affirmative action plan, this constitutes pretext, and a jury should decide his claim of reverse discrimination. (Petition, 9) ("an AAP is evidence of reverse discrimination.").

Hagan fails to reveal two critical facts with respect to this affirmative action plan: (1) WEA was required to have an affirmative action plan by government regulation; and (2) the undisputed evidence is that the decisions impacting Hagan were not taken pursuant to the affirmative action plan.

A. WEA Is Required By Federal Law To Have An Affirmative Action Plan And, Thus, No Discrimination Is Shown.

The simple fact of the matter is that WEA is required to have affirmative action plan. As a government contractor with more than $50,000 worth of contracts, Executive Order § 11246 and the OFCCP require WEA to have a written affirmative action plan. 41 C.F.R. § 60-2.1(b)(1)(i); (Arnold Dep., Opposition, Apx. 44a-46a); (Hagan Dep., Opposition, Apx. 4-6a).

Merely having an affirmative action plan is not evidence of illegal discrimination. *See Denney v. City of Albany*, 247 F.3d 1172, 1188 (11th Cir. 2001) ("[c]ourts have been extremely wary of citing lawful affirmative action plans as

evidence of an employer's pretext"); *Cerrato v. San Francisco Community College Dist.*, 26 F.3d 968, 976 (9th Cir. 1994) (mere fact of an affirmative action plan's existence is not evidence of discrimination); *Christensen v. Equitable Life*, 767 F.2d 340, 343 (7th Cir. 1985) (same), *cert. denied*, 474 U.S. 1102 (1986). Hagan conceded the validity of this legal maxim in the District Court. (Petition, Apx. 63a) ("Plaintiff is well aware that the *existence* of affirmative action plans does not automatically fulfill the requirement of direct evidence, and has rejected Plaintiff's claims of reverse discrimination based merely on the existence of an affirmative action plan and no other circumstantial evidence.") (emphasis in original).

This is particularly true where, as here, the federal government required WEA to maintain the affirmative action plan. *See Reed v. Agilent Technologies*, Inc., 174 F. Supp. 2d 176, 185 (D. Del. 2001) (government contractor's monitoring of compliance with minimum utilization expectations set by the federal government is not evidence of discrimination). Indeed, if the law were otherwise, then every time a white or male employee were disappointed in an employment decision made by a government contractor, then there would automatically be sufficient evidence to establish pretext and force a jury trial.

To support his claim that WEA's affirmative action plan is somehow evidence of discrimination, Hagan notes that WEA's plan uses the term "'under-utilization' (WEA's words)." (Petition, 4). In fact, it is federal regulation (the OFCCP's words) that requires WEA affirmative action plan to address "underutilization." 41 C.F.R. § 60-2.10(a)(1), (3); 41 C.F.R. § 60-2.16. Discrimination is not shown where a government contractor like WEA "track[s] its compliance with the minimum utilization expectations established by the

federal government." *Reed*, 174 F. Supp. 2d at 185. Thus, the fact that WEA had an affirmative action plan is evidence that WEA complied with mandatory federal regulation, not that it was engaged in intentional discrimination.

B. There Is No Split In The Circuits On The Issues Before The Court.

In an effort to create a supposed split in the circuits, Hagan misleadingly states that "[a] number of Courts of Appeal have looked upon AAP's and their race-conscious enabling measures as relevant to the question of whether a race discrimination plaintiff has succeeded in meeting this burden of establishing pretext." (Petition, 10). In each of these cases, there was evidence that the decision was made pursuant to an affirmative action plan or that race was a factor in the challenged decision. *See, e.g., Bass v. Bd. of County Commr's Orange County, Fla.*, 256 F.3d 1095, 1110 (11th Cir. 2001), *reh'g en banc denied*, 273 F.3d 1117 (11th Cir. 2001) ("[t]he existence of an affirmative action plan, when combined with evidence that the plan was followed in an employment decision, is sufficient to constitute direct evidence of unlawful discrimination unless the plan is valid") (emphasis added); *Schurr v. Resorts Int'l Hotel, Inc.*, 196 F.3d 486, 490 (3d Cir. 1999) (employment decision made pursuant to affirmative action plan); *Messer v. Meno*, 130 F.3d 130, 137-39 (5th Cir. 1997), *cert. denied*, 525 U.S. 1067 (1999) (public employer, among other things, directed plaintiff to "hire a Hispanic," and employees were told "it is not required that the most qualified applicant be hired, only that the person hired meet the minimum qualifications set for the position"); *Taxman v. Board of Educ. of the Township of* Piscataway, 91 F.3d 1547, 1551 (3d Cir. 1996), *cert. dismissed*, 522 U.S. 1010 (1997) (plaintiff laid off in order to promote diversity under an affirmative action plan); *Stock v.*

Univ. Foods Corp., 1994 U.S. App. LEXIS 771 (4th Cir. Jan. 19, 1994), *cert. denied*, 513 U.S. 813 (1994) (decision made under affirmative action plan); *Cunico v. Pueblo Sch. Dist No. 60*, 917 F.2d 431, 441 (10th Cir. 1990) (position was "earmarked" for a black candidate).

The cases cited by Hagan are simply not applicable to the case at bar because the undisputed evidence in this case demonstrates that the employment decisions impacting Hagan were not made pursuant to an affirmative action plan. (Schone Dep., Opposition, Apx. 20a-22a, 32a-33a); (Milanese Dep., Opposition, Apx. 58a-62a); (Costello Dep., Opposition, Apx. 38a-40a). Race played no role whatsoever in the challenged decisions. (Schone Dep., Opposition Apx. 32a-33a); (Milanese Dep., Opposition, Apx 59a-61a). The decisionmakers simply sought out the most qualified employees, period. (Schone Dep., Opposition, Apx. 32a-33a); (Milanese Dep., Opposition, Apx. 60a-61a). In response, Hagan could only muster, in his words, "total" speculation. (Hagan Dep., Opposition Apx. 6a-8a, 18a-19a).

The federal courts are uniform in holding that where, as here, the evidence demonstrates that an affirmative action plan played no part in the challenged decision, that plan is irrelevant to claims of discrimination. The Ninth Circuit summarized: "[o]ther circuits have held – and common sense tells us – that the mere fact of an affirmative action plan's existence is not relevant to proving discrimination unless the employer acted pursuant to the plan." *Cerrato v. San Francisco Community College*, 26 F.3d 968, 976 (9th Cir. 1994); *see also Denney v. City of Albany*, 247 F.3d 1172, 1188 (11th Cir. 2001); *Sampson v. Secretary of Transportation*, 1999 U.S. App. LEXIS 14142, at *6-7 (6th Cir. June 23, 1999). In this case, the Sixth Circuit looked to these "sister circuits" for guidance and found, like those other

circuits, that an affirmative action plan is irrelevant unless there is evidence that the employer acted pursuant to that plan. (Petition, Apx. 6a).

Moreover, the facts of the present case stand in stark contrast to those cited by Hagan. In this case, the CEO of WEA articulated that the Company's "goal" was to have the best workforce possible and to ensure that the "best qualified" people got the jobs without any type of discrimination. (Mount Dep., Opposition, Apx. 73a-79a). That goal is clearly stated in the preamble to WEA's affirmative action plans. (Arnold Dep. Exh. L, Opposition, Apx. 96a-99a). WEA's affirmative action plan repeats that it is "the Company's policy and practices to make all employment decisions without discrimination. . .." (*Id.*) Hagan, himself, acknowledged that he was told WEA's affirmative action plan prevented WEA from making employment decisions because someone was – or was not – a minority. (Hagan Dep. Opposition Apx 5a-6a).

The evidence in this case demonstrates that WEA decided against Hagan for certain positions for a variety of reasons – including the request of a major customer that Hagan not run WEA's Cleveland office because Hagan had not been visible with that customer and the fact that the decisionmakers concluded that Hagan had shown poor judgment by dressing up like Adolf Hitler – but none of these reasons have anything to do with the fact that Hagan is white or a man. Unlike the plaintiffs in the cases that he cites, Hagan has never pointed to any evidence in the record that the decisions impacting him had anything to do with WEA's affirmative action plan.

Hagan claims in his Petition there is an "open question" of whether a reverse discrimination plaintiff can prove "causation" through "indirect or circumstantial" evidence.

(Petition, 11). This question is not an open one under federal law. The simple answer to this question is "yes," but Hagan has never pointed to the "indirect or circumstantial" evidence sufficient to raise a genuine issue of material fact concerning pretext.

Consequently, the District Court and a unanimous Sixth Circuit panel examined the evidence in this case and determined that no reasonable jury could decide that the reasons for WEA's decisions were a pretext for intentional discrimination. As the Sixth Circuit concluded, Hagan's claim of a causal connection between the affirmative action plan and the challenged decisions is based solely on his own "unsupported statement." (Petition, Apx. 6a). Hagan would now have this Court reexamine the "vast documentary and testimonial record" and come to a different conclusion than the District Court and the Sixth Circuit on the ultimate issue of pretext.[4] At bottom, Hagan's Petition is a veiled request that this Court reexamine the settled standards governing the evaluation of motions for summary judgment. Those standards need no further review.

C. Petitioner's Arguments About Validity Are Both Irrelevant And Wrong.

Hagan also argues about the validity of WEA's affirmative action plan. Even if Hagan had not waived this issue, he still would not prevail. The federal courts have determined that the validity of an affirmative action plan is not an issue unless there is evidence that the affirmative action plan played a role

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[4] Moreover, the District Court also found faults in Hagan's attempts to establish a *prima facie* case. (Petition, Apx. 36a, 37a, 41a). The Sixth Circuit based its ruling simply upon the issue of pretext. Thus, there is an independent ground to support the decision below.

in the challenged decision. *See, e.g., Brown v. McLean*, 159 F.3d 898, 904 (4th Cir. 1998), *cert. denied*, 526 U.S. 1099 (1999) (no need to determine validity of an affirmative action plan unless the employment decision is made pursuant to the plan); *McQuillen v. Wisconsin Educ. Assoc. Council*, 830 F.3d 659, 666 (7th Cir. 1987), *cert. denied*, 485 U.S. 914 (1988) (same).

Petitioner's heavy reliance upon Third Circuit's decision in *Taxman* is misplaced. 91 F.3d at 1547. In *Taxman*, a public employer laid off a white employee pursuant to its affirmative action plan in an effort to promote racial diversity. *Id.* These are just not the facts before this Court. In this case, the undisputed evidence is that the decisionmakers selected the most qualified candidate for this position, regardless of race or sex. (Schone Dep., Opposition, Apx. 32a-33a); (Milanese Dep., Opposition, Apx. 60a-61a). As the circuit courts have uniformly decided, the validity or invalidity of WEA's affirmative action plan is irrelevant because the decisions Hagan is challenging were not made pursuant to the affirmative action plan.

Even assuming, *arguendo*, that the validity of WEA's affirmative action plan were properly at issue in this case, it is Hagan's burden to establish that WEA's affirmative action plan is invalid. *See Johnson v. Transp. Agency, Santa Clara County, Calif.*, 480 U.S. 616, 626-27 (1987). Hagan has not met this burden. Federal regulation requires WEA to have a plan as a government contractor. Moreover, WEA's affirmative action plan forbids discrimination based upon protected categories, such as race and sex. (Arnold Dep. Exh. L, Opposition Apx. 96a-99a). WEA's affirmative action plan is patterned on the guidelines established for government contractors and is updated annually – that is all that is

required. 41 C.F.R. § 60-2.1(c). There is simply nothing here to merit Supreme Court review.

CONCLUSION

Boiled down, this is a garden-variety discrimination case where the Plaintiff did not establish pretext under Ohio law for the 1995 claims and under Title VII and Ohio law for the 1999 claims. No compelling reason exists for this Court to grant certiorari in this case.

Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. C-1-00-412

[May 30, 2001]

PETER M. HAGAN,
Plaintiff,

v.

WARNER/ELEKTRA/ATLANTIC CORP.,
Defendant.

EXCERPTS DEPOSITION OF
PETER M. HAGAN, JR.

[p.133]

before Freddie left but I'm thinking it might have been -- might have been 1991. Don't hold me to it. I think it could have been but I don't recall.

Q. When Rick Froio comes in, he becomes -- well, let me keep going. Let me keep going on your -- how long did you have the field sales manager position, from 1986 until when?

A. Field sales manager till 1989, I believe.

Q. In 1989 you become the sales manager?

A. That's correct.

Q. And in that job you were the number two person in the office?

A. Correct.

Q. How long did you have the sales manager position?

A. I had that until I was demoted in 1995.

Q. You had the sales manager position in '89, Rick Froio comes in sometime in the early 1990s, correct?

A. That's correct.

Q. And he is your boss?

A. He is going to be my boss when Freddie retires, that's correct.

Q. He then becomes your boss?

A. Yes.

* * *

[p.140]

the sales manager?

A. My duties as a sales manager were to direct all aspects of sales for the Cleveland market, which was Cleveland, Pittsburgh, a -- Buffalo, Rochester, New York and some parts of West Virginia. And my main job was making sure that we hit our goals as far as performance of sales that we were given by WEA home office.

I was in charge of the day-to-day dealings with the salesmen. I had -- I was in charge of day-to-day dealings with -- at that time we didn't have field sales managers. Later we did. Okay. With the salesmen. I was responsible for direct relationships with the customers going out to the accounts with the salesmen on a frequent basis, knowing the accounts, working with them, setting up promotions, setting up advertising. All advertising was handled by me. And that's kind of a thumbnail sketch of the main areas that a sales manager would have been responsible for.

Q. In 1995, you become a field sales manager. What were your responsibilities from 1995 to 1999 as field sales manager?

A. I was responsible for -- directly, I had the PDRs, product development reps, reported directly to me. They were a marketing arm for each one of the labels. They

* * *

[p.181]

Q. When did you get this document?

A. Pardon?

Q. When did you get this document?

A. I don't have a date. There was no date on this and I couldn't tell you the exact date of it. It was just one of the times someone showed up to present a presentation to us.

Q. Let's go back to Defendant's Exhibit 30. Did I -- as I recall, you cannot put a time table on when you received Defendant's Exhibit 30?

A. No. I didn't write a date on either one of these so -- and I couldn't tell you -- they possibly could have been at the same time. I really don't know.

Q. Was it your understanding that WEA had an equal employment opportunity policy?

A. Yes.

Q. And that that policy forbade discrimination?

A. As far as I knew, the way they explained it to me, yes, it did.

Q. Do you know whether WEA had -- has an affirmative action policy, a program?

A. I assume they do.

MR. HORDES: Objection. That calls for a legal conclusion as to what affirmative action is. You can [p.182] answer.

Q. What makes you assume they have an affirmative action policy or program?

A. I think every major corporation in the United States has to have one. I mean, it's my understanding of it.

Q. What's your understanding of what WEA's affirmative action policy or program is?

A. I don't think I've ever been given a in-depth analysis of what their policy is enough to be able to quote it chapter and verse. I mean, it is -- they're just are supposed to follow the rules, the guidelines set down by the government.

Q. Have you been told anything about it?

A. They went over some things in different meetings.

Q. Can you recall anything? I'm just asking you to the best of your memory.

A. I'm sure there were things that were -- I can't recall specifically but I know there were things that you -- they wanted you to do and not do. You couldn't tell someone that they couldn't apply for a job because they were a minority or you -- on the other hand, you couldn't tell them they couldn't apply for a job because they were not a [p.183] minority. Either way. You had to basically, I think, my premise of

theirs is to keep everyone on the same playing field type of an analogy.

Q. Do you remember anything else about the -- what you were told about either WEA's equal employment opportunity policy or their affirmative action policy?

A. Not specifically. Again, in generality I remember is to keep everyone under the same playing field. Again, they came in every couple of years and did one of these seminars. It wasn't like we got one every month. It wasn't something that was ongoing structured basis and it all -- it came from California. So it was just enough to know that -- if we had any questions about anything, we were certainly instructed to call Helen or call home office about any problems or areas we may have a question about.

Q. Did you ever call home office or Helen about any questions in this area, or concerns?

A. In affirmative action?

Q. Or EEO policy.

A. I'm not sure. I've talked to Helen about problems with employees. I don't know what the areas of specific area, if it's an EEOC or affirmative action. I've spoken with Helen, as I think I've spoken with Vicki Arnold, too.

* * *

[p.212]

given opportunities to bump people under them to remain employed.

Q. Anything else?

A. I think those are the key facts. There may be something else. Right now at this time that's what I can remember.

Q. What about you -- who at WEA do you think discriminated against you?

A. I have no way of knowing who at WEA. I don't think anyone raised their hand and said, Pete, I'm going to discriminate against you. Obviously someone did. There was some plan somewhere but I don't have any idea who that individual may be.

Q. What makes you -- what about you, Mr. Hagan, do you think that this unnamed corporate person or persons at WEA, upon what basis do you think they discriminated against you, Pete Hagan?

A. I think I just said that, didn't I?

Q. No, I'm not asking for the reasons. What about you, Mr. Hagan --

A. I don't know --

Q. -- do you think they're targeting?

A. I don't know who did it so how could I know what it was about me that would make them do it.

[p.213]

Q. Do you think they were targeting your race?

A. I don't know what they were doing.

Q. Do you think they were targeting your sex?

A. I've answered I do not have a clue.

Q. Do you think they were targeting your age?

A. I don't know.

MR. HORDES: Objection.

A. I was never given a reason, a specific reason as to why I was being demoted.

Q. In 1995?

A. In 1995.

Q. Were you ever given a reason why you did not have the opportunity to interview for the -- for a position in Philadelphia?

A. No, I was not.

Q. Did you ever ask?

A. Ask what?

Q. Why you were not given the opportunity to interview for a position in Philadelphia?

A. The jobs in Philadelphia were already awarded to the other two individuals three days before they told us that the Cleveland office was being closed. They had already filled those jobs.

Q. So Jeannie White and Mary Ressner were in their

* * *

[p.216]

A. He started talking about relocating, about moving. And he -- actually, I think he brought it up about, you know, would I -- what would I think about relocating, what would I think, something to that effect. And that's when I told him that.

Q. Was this at the -- after Pat Borrell had left her job?

A. Pat Borrell?

Q. Who was in the position that -- what position did Sue Costello get?

A. She was formerly was the field sales manager.

Q. Who was in that position before Sue Costello?

A. I don't know. I think Sue Costello had been a field sales manager there for several years. I don't know who she replaced. I would not know. I don't think I know. She had been there for several years. Pat Percell.

Q. Pat Percell? What was her position at WEA?

A. His position.

Q. His position, sorry.

A. Pat Percell, the name -- I mean, I know him -- something, oh, I think he was the -- I think he was the sales manager and --

Q. And then Pat Percell left --

A. -- Sue took his --

[p.217]

MR. HORDES : Hold on, let him finish the question.

Q. Pat Percell left, correct?

A. That's what I'm thinking I remember, yes.

Q. And there was a vacancy in the sales manager position for months and months in Philadelphia, correct?

A. The vacancy I remember that was for months and months was the vacancy after Sue Costello took Pat Percell's position and when they gave the position to Jeannie White. That's the vacancy I remember that was a long vacancy. That was several months. I don't know what the time frame between Pat Percell leaving and Sue Costello being given the position. I don't remember.

Q. All right. When did you tell Dale Hill you might be interested in the field sales manager Philadelphia position?

A. When it was announced after we found out about it, and I don't know the exact date but we were talking about it in Cleveland. He just said something about it and I said, you know, well, if they're doing interviews and that, I said, I wouldn't mind interviewing for that. Because I thought it might be good to get away from Cleveland and get a breath of fresh air and whatever. I said, if Ray asks or whatever, let him know I would be [p.218] interested.

Q. What did Hill say in response?

A. He said, okay.

Q. Did you contact Ray Milanese about that position?

A. No, I did not.

Q. Why not?

A. Dale Hill had a policy, unwritten, that he did not want the -- me in particular, but any other managers or whatever, myself and -- I don't know if it was Patti Fullard, but he did not want me talking directly to either Denny Schone or Ray Milanese. If I made any effort at all to contact them directly, I got blasted for it. And I felt I wanted my job more than getting fired because Dale Hill got mad at me because I talked to a branch manager. So I just decided the prudent thing to do was do what he said and that's what I did.

Q. So your contact -- when you were working under Dale Hill, your primary contact was -- the person you reported to, the person you dealt with on a regular basis was Dale Hill, correct?

A. Exactly, that was it.

Q. And Dale Hill, his report was Denny Schone and then Ray Milanese?

[p.219]

A. Correct.

Q. And Dale Hill interacted much more frequently with Denny Schone and Ray Milanese than you did?

A. Correct.

Q. And when Hill was reporting to Ray Milanese, you would see Hill and Milanese meeting a lot, having meetings where you were not included, correct?

A. Correct.

Q. And those meetings would last much longer than Milanese's meetings with you?

A. I don't know if Ray ever had an actual one-on-one meeting with me that I remember. He would have -- if he had one-on-one meetings he would have them with Dale. He may call the other managers in after they discussed what whatever they were discussing, into Dale's office and talk to us maybe as a group or something. That was usually the way it went.

Q. So you really didn't have a lot of one-on-one interaction with Ray Milanese, correct?

A. No.

Q. Correct?

A. Correct, yes, correct.

Q. I wanted to make sure.

A. Yes.

* * *

[p.236]

their job qualification was pretty broad based and whatever. But knew the music or seemed to be able to work well with people, seemed to get along with the accounts, have some type of a relationship with the accounts. She was working for in Detroit when I went over and interviewed her for the job in that. Those are some of the things I looked at. Also the recommendation of people in the office that had been working with her.

Q. And the field sales manager black music position is a different type of position, correct?

A. Yes, it is.

Q. And it's a different type of position because you're interacting with a lot of independently owned and operated small businesses, correct?

A. Correct.

Q. That are quite often located in urban areas?

A. Correct.

Q. And do you think you need a strong knowledge of black culture to do that position well?

A. Not black culture as much as black music and what's going on with black music. I mean, we don't sell their culture, we sell their music. We sell the things that -- you know, we have to know what they're listening to and what their tastes in music are and where they buy their

* * *

[p.376]

A. I don't think she ever came and really invited me to go on sales calls with her. And her thing was -- if she went on sales calls, she would either go with the salesmen or she would go with her PDRs to their little independent accounts or whatever. For the most part, they didn't buy direct. And I would go on sales calls with Patti to go to Camelot or National Record Mart or Arrow or some of the larger accounts and whatever. But that we would go together. But, you know, we did that -- that was the most that we did calls together. We would go to those larger accounts and sometimes go out of town and -- like meetings with accounts and whatever that -- customer meetings and whatever together. As a group, too, it would be more than Patti. Sometimes it would be Patti and several managers.

Q. Right. But the position of field sales manager black music was primarily designed to service the small independent accounts?

A. That was the original thrust of it, correct.

Q. And that was true up until the time you left WEA, correct?

A. It was -- that was still really the thrust of what they were doing. They did try to get into the chain stores wherever possible and whatever, but their day-to-day dealings were primarily with the small independent [p.377] retailers.

Q. And that is a different type of account -- the black music accounts are a different type of account than the other WEA accounts?

A. Well, all small retail accounts are almost the same. They're all struggle, they all have their own type of problems. If it's black music, if it's a country music store or a classical store, they all have some commonalities about them that they're problems. And black music stores seem -- you know, they all have problems. Black -- doesn't matter what genre of music they're in. Any small retailer has problems.

Q. But that's a different type of business, right?

A. A little bit, yes. Because of the nature of the business. It's a very fast moving business. It's a -- again, there are trends with -- something's hot in a black music arena, it can be very hot and it can die very quickly and something else can take its place very quickly. It's a little faster moving as far as the shelf life of the product you're dealing with or whatever.

Q. And that was different than the area of music that you spent most of your efforts on, right?

A. It was a little quicker. It wasn't different. The same premise works on no matter what you sell. We [p.378] always looked at our product as fresh fruit.

Q. And after Patti Fullard came on in the late 1980s to handle black music, from that point forward, you did not have as much involvement in the black music -- in the selling of black music, correct?

A. That would be correct.

Q. That was left to Patti Fullard?

A. That was her job.

Q. And you would -- you would -- Patti Fullard would -- you would assist Patti Fullard on an account that she worked on if she asked, right?

A. Yes, I would.

Q. But you were not going out volunteering to help Patti Fullard on particular accounts, right?

A. Unless she volunteered that she needed the help. If she gave me indication that she needed the help, then I would. But otherwise, no.

Q. Do you consider yourself to be -- to have an interest in black music?

A. Pardon?

Q. Do you have an interest in black music?

A. I grew up with The Temptations, The Supremes, whatever. I like black music. I don't understand the current rap and ghetto rap and all of that. I don't have an [p.379] interest in that. I enjoy -- I enjoy all good music. I don't care

what type of music it is but I don't understand today's black music.

Q. By using the word "today," you're talking about the music of the 1990s?

A. I'm talking about the stuff in the last couple of years that's came out. It's been a radical change from what used to be soul music and rhythm and blues or whatever. It's been a total change in that.

Q. When did it radically change?

A. I'm guessing, I'm not an expert. To my feelings are, it probably started changing around 19 -- probably around 1994, maybe 5, getting into where it is right now with the hard core rap and what they're into now musically.

Q. And from '94 and '95 forward, you didn't like that type of black music, correct?

A. I did not like to listen to that type of black music. I could not -- it would be like me listening to something in a foreign language.

Q. And I take it that from '94 or '95 forward, you didn't follow black music because you didn't like it?

A. Well, I didn't have the responsibility of sales. I followed it if it were -- if it were mainstream [p.380] hit product or whatever, if we had something that was hot and whatever, I followed that. I didn't follow the breaking developing artist or whatever. But certainly if we had a Missy Elliott that was debuting on the chart at number five on a new release, I'd be aware of that and follow that.

Q. So you would follow the big hits in black music but you wouldn't follow the more minor artists?

A. Correct.

Q. And the more minor artists might be selling at some of the smaller independently owned stores that catered to black customers?

A. That would be correct.

Q. How often, Mr. Hagan, have you in the last, let's say, seven years attended clubs, music clubs that are predominantly attended by black patrons?

A. In the last seven years?

Q. Yes, sir.

A. There were a couple of clubs in the Flats. A friend of mine owned one of the larger ones in the Flats and I went in there a couple of times. But as far as attended -- again, describe what kind of club you want to know if I attended.

Q. A music club that is predominantly attended by black people.

* * *

[p.491]

A. Pardon?

Q. Denny indicated to you on that day the decision had not been made, right?

A. Correct. He wanted me to call him on the following Friday.

Q. Then you write, "they want a black sales manager" ?

A. That's what I had figured out by the time I -- that's when I saw Dale Hill come through the door, I knew exactly what was going on.

Q. How did you know what was going on, Mr. Hagan?

A. Because I knew the company didn't have anyone in management other than field sales manager black music and they were getting all this pressure from Jesse Jackson, NAACP, Al Sharpton, et cetera, and my gut told me that this was going to happen. Just a gut reaction.

Q. So you base that on a gut reaction?

A. Gut reaction. That's all it was.

Q. Speculation at this point, right?

A. Pardon?

Q. Speculation?

A. Yes. Totally.

Q. Then on -- you'd agree with me that the pen on -- and feel free to consult the original which your lawyer

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APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. C-1-00-412

[October 26, 2001]

PETER M. HAGAN,	)
Plaintiff,	)
	)
v.	)
	)
WARNER/ELEKTRA/ATLANTIC CORP.,	)
Defendant.	)
	)

EXCERPTS DEPOSITION OF
DENNY SCHONE

* * *

[p.42]

what's been marked already as Exhibit 30 to the Hagan deposition. I think counsel and I can agree this is what it was. It's entitled Purpose and Policy, Purpose of Affirmative Action Program.

MR. SKIDMORE: Just note for the record, again, this is Mr. Hordes' handwriting of the document.

MR. HORDES: Let me make it easier. I'll mark it as an exhibit.

MR. SKIDMORE: Off the record.

(Discussion had off the record.)

MR. HORDES: Q I'll show it back to you. This is a document that's been marked Defendant's Exhibit 30 in the deposition of Peter Hagan, and it also has a 468 on the bottom page. It's a two-page document, pages 468 and 469 on the bottom.

A 468 and -- Is this a copy?

MR. SKIDMORE: You've handed us two copies of it, Mr. Hordes. He's asking you about the first two pages.

MR. HORDES Let me have the other one back.

MR. SKIDMORE: The question simply is, have you ever seen this before?

THE WITNESS: Yes.

MR. HORDES: Q When did you first see this?

A Yesterday.

[p.43]

Q Okay. You never received this from Helen Zollberger or anyone else from home office?

A Not to my recollection, no. And to be quite honest, in looking at the address on here I wouldn't know why I would because this is for Chatsworth, California.

Q What makes you think -- Where it does say Chatsworth, California?

A Third sentence, first page.

Q Do you know whether WEA ever had an office in Chatsworth, California.

A I believe we did, yes.

I'd like to take a break.

(Break taken.)

MR. SKIDMORE: Mr. Schone is going to assume that if you ask him if he's seen a document, that excludes what he saw in the preparation session.

MR. HORDES: Correct. I'm interested in back when all these facts were coming together, back prior to when this litigation started.

THE WITNESS: Based upon what David just said, obviously my answer to that question would be no.

MR. SKIDMORE: That's in reference to Defendant's Exhibit 30.

* * *

[p.70]

Q Yes.

A As in a formal training program?

Q Yes.

A No.

Q Are you aware that there are written job descriptions for the position of sales manager?

A Yes, I am.

Q Is that something that you developed or does that come out of the home office?

A It comes from home office.

Q To your knowledge, is there a requirement that a sales manager have a college degree?

MR. SKIDMORE: A requirement?

MR. HORDES: Right.

THE WITNESS: No.

MR. HORDES: Q Are you aware that a college degree is deemed desirable for a sales manager?

A Deemed desirable by who?

Q By the home office, if you know?

A Never really -- Don't ever recall ever having a discussion about it.

Q When you were looking for a sales manager, do you deem it desirable that a sales manager have a college degree?

[p.71]

A. Do I deem it desirable?

Q. Yes.

A. It definitely is a plus for that person, yes. I mean, I view that as obviously better educated in a management level. I feel they should be able to handle situations a little bit better to have the background with a college degree.

Q. Do you know whether Tony Niemczyk has a college degree?

A. Yes, he does.

Q. What about Claire Koroly?

A Yes, she does.

Q Was that factor determinative in your decision to hire them?

A I think you have to be a little bit more specific with determinative.

Q If they hadn't had a college degree, would you have hired them?

MR. SKIDMORE: Objection, calls for speculation.

MR. HORDES: You can answer.

MR. SKIDMORE: Objection, hypothetical.

MR. HORDES: Q Well, you hired these people and I think you indicated a while back all the different factors that you look at, that you were impressed with

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[p.86]

MR. HORDES: I'm just trying to get a general idea so the record is clear as to what types of contact this witness had with Mr. Hagan pre 1995. And I think he's adequately described he called on you as a customer. Another contact is you two guys worked in the same territory and had different accounts.

MR. SKIDMORE: You have not asked whether he expressed opinions?

MR. HORDES: No, not yet.

Q My next question is, again, not counting when you became in charge of Cleveland but up until then, sitting here

today, do you have any idea or opinion as to Mr. Hagan's strengths and weaknesses, if you have an opinion?

A Prior to 1995?

Q Prior to 1995 when you saw him call on accounts when you worked with him as a sales rep.

A Basically felt his job performance was average at best. Not the greatest knowledge of music, but did an okay job, a decent job.

Q And are you describing him as someone who called on you at Swallens or are you describing him as co-sales rep?

A Both.

[p.87]

Q When you say he was -- really didn't know music, what do you mean by that?

A I didn't say he didn't know music.

Q Maybe I didn't get my notes correctly.

A Can she read back the response?

Q He didn't have a great knowledge of music?

A Didn't have the greatest knowledge of music is what I believe I said.

Q Can you give me some examples?

A Not really. If you want a generalization, probably couldn't tell me who the bass player was in Crosby Stills & Nash or something like that. I mean, I guess if I compared his knowledge of music to other sales reps that called on me, he'd probably be below of the norm.

Q Did he present a poor image as a sales rep for WEA when called on you at Swallens?

A No.

Q Was he courteous?

A Yes.

Q Was he timely in responding to your inquiries?

A I believe so, yes.

Q When you were co-sales reps, do you know of any accounts complaining about him?

[p.88]

A Well, they wouldn't be complaining to me anyway.

Q Well, I know that. But did you hear second-hand or third-hand that accounts were unhappy with Pete Hagan?

A That's difficult. No. But I wouldn't really be privy to that information.

Q Okay. If you don't know, you don't know. Do you ever recall Mr. Cox criticizing Mr. Hagan within earshot of you. Either he's telling you he doesn't like something Mr.

Hagan is doing or you overhear him say something bad about Mr. Hagan?

A No. It would be very unprofessional on Mr. Cox's part if he did that.

Q Is your memory exhausted as to Mr. Hagan's strengths and weaknesses?

MR. SKIDMORE: At what point?

MR. HORDES: Q As of the time he was either calling on Swallens or when you and he were co-sales reps. Can you think of anything else other than what you've already told me either pro or con?

A Well, I mean, strengths and weaknesses? Again you know, Pete was, if you want to put it in the category of strengths, was dependable. Made calls on a timely basis. But you know, my feeling was that the job [p.89] effort was adequate, never went to that extra step or next level. Did what needed to be done, but nothing over and above.

Q Did you take the extra step?

A I think I did, yes.

Q Was there -- Were sales representatives ranked in the Cincinnati office depending on the volume of sales generated?

A No.

Q So you don't know whether you had better numbers than he did?

A Well, it's difficult to determine. I can say that I think my numbers were better than his only because my customer base was -- I had bigger accounts than he did.

Q There came a time, obviously, you moved on. You went to Kansas City and Chicago and Pete went his own way. As of the spring of 1995, before we get into that interview process which we'll talk about later with Dale Hill, prior to that time, had you ever been privy to a conversation with Rick Froio in which he told you anything about Pete Hagan?

MR. SKIDMORE: The time frame again on this?

MR. HORDES: Q At any time prior to the spring of

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[p.130]

Q Can you explain what you mean by that?

A Well, he didn't in the interview come right out and get in my face and, you know, say, Denny, I want this job. I know I can do this job. This is the job for me. I'm your man.

MR. SKIDMORE: Let the record reflect the witness was pounding the table.

MR. HORDES: Q You said he didn't give that impression or he did?

A Did not. He didn't come on aggressively. In a very mild mannered way showed that this was definitely something that he was interested in.

Q When he left the room, did you and Mr. Froio talk about him?

A I don't believe so.

Q And did you interview Mr. Hill?

A Yes.

Q Tell us about that interview.

A Came on very sharp, basically was very upbeat, expressed high interest level in the position, gave me a lot of background on himself. And the one thing that I remember specifically, and I don't believe it was during the interview, but after the interview in a follow-up conversation that I had with Dale was I was concerned [p.131] about where his priorities were.

Again, as I stated earlier, he was being talked to by Elektra Records as a national sales director for Elektra Records, Atlantic Records was talking to him about a job, and there was a couple other inquiries about him. And I approached him about the situation. Again, in this business, you really -- as you grow in your career in the record business, at some point you reach a level where you have to decide if you want to work in distribution or you want to work for a label. And when I confronted Dale about that, he was very vocal, very adamant about the fact that, Denny, I want the Cleveland sales managers job. I know I can do the job for you. I'll do a great job for you, and that the other job offers that he had been approached were secondary to this job.

Q Was Dale Hill one of those people, as you later found out, that you had contacted him or he showed independent

interest in talking to you? You talked to Alberti. You weren't able to recall whether this was someone who had shown an independent interest in the job like Mike Barnes did or was someone who we approached like Mr. Orr. Do you know the difference?

A Yes.

* * *

[p.174]

already performed?

MR. SKIDMORE: Objection, asked and answered. You can answer again.

THE WITNESS: I can't recall any, you know, specifics. But again, it was I needed to see him improve in his overall job performance. I'd like to see him be a little bit more aggressive.

MR. HORDES: Q Aggressive in what sense?

A Just an overall attitude, work habits in the job.

Q What did you tell him that he had some problems with his work habits?

A Specific problems, no. Did not identify any specific problems.

Q What work habits did you have in mind when you said he needed to be more aggressive in his work habits?

A I thought he needed to be more proactive, a little bit more visible on the street at the account and customer level, spend a little bit more time with sales reps, and just become more involved in day in and day out sales and marketing functions.

Q Had you been told that he had not been visible on the street before?

A I believe when Mike Barnes -- Yes.

* * *

[p.177]

MR. HORDES Q Originally, you said that you and Mr. Froio together decided to hire Dale Hill?

MR. SKIDMORE: I don't think that's what he said.

MR. HORDES: Q Now you're saying it was your decision. Was it a joint decision?

A It was a joint decision, but the ultimate final decision was mine because I was taking over that marketplace and --

Q Okay.

A It was going to be my responsibility to make sure things got done right.

Q Did Mr. Hill's race play any role in your mind in the decision to offer the job to him as opposed to anybody else?

A No.

Q Did it play even a minor role in your decision to bring Mr. Hill aboard as sales manager?

MR. SKIDMORE: Objection, asked and answered. You can answer again.

THE WITNESS: Repeat the question.

MR. HORDES: Q Did Mr. Hill's race as an African American have even a minor role to play in your decision to bring him aboard as sales manager for the Cleveland district?

[p.178]

A No. My decision was based solely on best person available for the job.

Q Okay. I want to shifted focus now to that period of time after Mr. Hill became the field -- the sales manager. What was the nature of your contact with Mr. Hill? Was it by visits or phone calls or what?

A Both.

Q Did you arrange to meet with him on a pre-arranged periodic basis?

A What do you mean by a --

Q Once a month, once every other month, or once a quarter?

A No. Trips were scheduled when we -- when I -- when actually we both deemed necessary. And obviously in the

beginning, I had to take him around to meet the accounts. So I was there, you know, in the beginning quite a bit.

Q Did there come a point in time in which you started receiving complaints about Dale Hill?

A Complaints from who?

Q Well, let's start with -- That's a fair statement. From the labels.

A From the labels?

MR. SKIDMORE: Is the question has he ever received

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[p.264]

whether you've seen this before. Take your time.

A. Well, by looking at it immediately I don't even recognize this.

MR. SKIDMORE: Do you want him to take time to read it?

A. I've never seen this before in my life.

Q. Do you know who Mr. Carns is?

A. Carns?

Q. Yes, the one who originated that e-mail.

A. You mean Carney?

Q. Carney, excuse me.

A. Yes. He works for us at home office if it's the Kevin Carney I'm thinking of.

Q. But you've never seen that memo before?

A. No.

Q. Did you ever recall throughout your professional career reading magazine articles or listening to television or otherwise learning that civil rights organizations were criticizing the record industry for not having enough blacks in management?

MR. SKIDMORE: I think you already went into this.

MR. HORDES: I don't think I did I went [p.265] into it with other people.

A. Nothing specific, no.

Q. Did you ever hear of the Rainbow Coalition buying stock in record companies?

A. No.

Q. Have you ever heard of anything about the Rainbow Coalition writing the boycotted record companies that didn't hire enough blacks?

A. No.

Q. I'm going to show you what's been marked Plaintiff's Exhibit 40, which was a deposition Exhibit in the Vicki Arnold deposition in California earlier this year. Again, you don't have to read line by line, but do you recognize the document in its entity?

A. Yes, I recognize the document.

Q. You do recognize the document?

A. Well, I mean, I know -- I'm stating that I've seen that this is an affirmative action plan document, right.

Q. Did you know prior to now that WEA had an affirmative action plan in place?

A. Yes.

Q. How did you find out about that?

* * *

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. C-1-00-412

[June 6, 2001]

PETER M. HAGAN,
Plaintiff,

v.

WARNER/ELEKTRA/ATLANTIC CORP.,
Defendant.

EXCERPTS DEPOSITION OF
SUSANNE COSTELLO

* * *

[p.7]

Q -- work?

A Yes.

MR. SKIDMORE: Make sure you let him finish his question. I know you know what he's going to ask, but let him finish the answer.

THE WITNESS: Okay.

MR. SKIDMORE: You're doing fine.

BY MR. HORDES:

Q Are you aware, sitting here today, of any concerns raised by any of your superiors at WEA - - and by superiors I mean Mr. Milanese or people higher up then that in the California home office - - about the under representation of blacks and women in WEA's management?

A No.

Q That's never come up before?

A No.

Q Have you ever attended meetings in California, WEA meetings?

A Yes.

Q Were you at a meeting were Dave Mount gave a speech at the 25th Anniversary of WEA?

A I believe I was at the 25th Anniversary

* * *

[p.9]

document before?

A I don't recall.

Q Take your time and read it, if you want.

A I don't recall seeing this.

Q Turn the page to the top of the next page. Do you see Item Five?

A Yes.

Q Do you see where it says: Please view your management backup on minority representation?

A Yes.

Q Have you ever seen any questionnaire that had that question on it before?

A Not that I recall.

Q And you've never seen this particular question?

A Not that I recall.

Q Has Mr. Milanese ever asked you, on his behalf, to do a study of how many blacks and how many women you have in various job categories?

A No.

Q Do you read Billboard Magazine?

A Occasionally.

* * *

[p.16]

opinion of Mr. Hagan?

A No.

Q Did Mr. Schone ever share with you his opinion of Mr. Hagan?

A No.

Q Did Mr. Froio ever share with you his opinion of Mr. Hagan?

A No.

Q Did anybody in WEA management ever share with you their opinions of Mr. Hagan?

A No.

Q As of the time of the closing of the Cleveland office, did you have any opinion, one way or another, as to who would be a better candidate for the Field Sales Manager position in Philadelphia; Hill versus Hagan?

A No.

Q Did Mr. Milanese share with you who he thought would be the better candidate for the position?

MR. SKIDMORE: Between?

MR. HORDES: Hill and Hagan.

THE WITNESS: No.

BY MR. HORDES:

Q Did there come a point in time in which

* * *

[p. 24]

A Yes.

MR. SKIDMORE: Little records with big holes.

BY MR. HORDES:

Q So, you interviewed Ressner, White and Cox. Had you and Mr. Milanese talked about interviewing other people from the Cleveland office besides Dale Hill?

A No.

Q You didn't consider any other people out of Cleveland besides Dale Hill?

MR. SKIDMORE: Objection. That assumes something that's not in evidence. Go ahead.

THE WITNESS: I wasn't in the - - however you just phrased it, I wasn't in that. I did not - - whoever expressed interest in the position, I interviewed. I did not select people to interview.

BY MR. HORDES:

Q Do you know whether people from Cleveland, besides Dale Hill, expressed interest in interviewing for that position?

A No.

Q Did Mr. Milanese indicate to you that [p. 25] there were some other people in Cleveland, besides Dale Hill, that might be interested in that position?

A No.

Q During your entire tenure with the Philadelphia office, I guess that goes back twenty some years, all in Philly?

A Yes.

Q Do you know of any WEA person who transferred to a management job in Philadelphia from some other city that wasn't Philadelphia? Do you understand my question?

MR. SKIDMORE: I don't. Do you understand his question?

THE WITNESS: I'm not certain I understand your question.

BY MR. HORDES:

Q All the vacancy in the management positions in Philadelphia, Field Sales Manager, Sales Manager, Field Sales Manager of Black Music, et cetera, were they always filled by people who already were in the Philadelphia office?

MR. SKIDMORE: I'm sorry. I don't understand the question. When?

* * *

APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF OHIO
WESTERN DIVISION

No. C-1-00-412

[July 9, 2001]

PETER M. HAGAN,	)
Plaintiff,	)
	)
v.	)
	)
WARNER/ELEKTRA/ATLANTIC CORP.,	)
Defendant.	)
	)

EXCERPTS DEPOSITION OF
SUSAN VICTORIA ARNOLD

* * *

[p.62]

compromise.

MR. HORDES: At lunch, I will go over the correspondence. Okay.

Q. In your capacity as an executive in HR from the late '80s through the '90s, were you ever told why WEA was promulgating affirmative-action plans?

A. I wasn't told why we were doing it initially.

Q. Uh-huh.

A. My understanding is that we are deemed a government contractor --

Q. Sorry. Go ahead.

A. -- and, therefore, have to prepare the plans.

Q. Is that just something you presume, or did someone tell you that?

A. Well, we had an audit one year by the OFCCP, and they said we were, and we had to do it.

Q. Just for the record, what is the OFCCP?

A. Office of Federal Contract Compliance Program, I think.

Q. How is WEA a government contractor?

A. I believe that we sell product to some companies that sell to like the PXs on the bases.

Q. Army bases and Navy bases and --

A. I think so. I don't personally know.

Q. And is your understanding that because WEA does

* * *

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. C-1-00-412

[June 8, 2001]

PETER M. HAGAN,
Plaintiff,

v.

WARNER/ELEKTRA/ATLANTIC CORP.,
Defendant.

EXCERPTS DEPOSITION OF
RAYMOND S. MILANESE

* * *

[p.35]

MR. HÒRDES: Sure. Right now is a good time.

(Whereupon a short break was taken at this time.)

BY MR. HORDES:

Q Mr. Milanese, I'm going to show you a document that's already been marked in the previous deposition of Peter Hagan as Defense Exhibit Thirty, and I ask you just to look at that document. Do you recognize that document?

A No.

Q You have not seen that document before?

A No.

Q About how many sales managers have you had at Philadelphia's branch office since you've been branch manager?

A Approximately six.

Q And of those six, how many of them were promoted from within and how many with were either hired off the street or came from another WEA region or WEA branch?

MR. SKIDMORE: Can you repeat the [p. 36] question for him? I'm sorry.

BY MR. HORDES:

Q Let me do it this way: Of all the WEA sales reps that have worked under you, have any of them come from you? Have any come from another WEA region?

A Yes.

Q And how many would that be?

A One.

Q Who was that person and where did he or she come from?

A Her name is Mak Kelly.

Q Where did she come from?

A She was, at the time, out of the New York branch.

Q And the other sales managers, they all were promoted from within the Philadelphia branch?

A One sales manager had already existed when I got there. The balance were promoted from within.

Q How about field sales managers, were any field sales managers ever transferred to Philadelphia from another WEA branch?

A Not that I recall.

* * *

[p.128]

better job at the time.

Q Did Dale Hill bring any fresh ideas to his job, that you can remember?

A I thought the world of Dale Hill. I thought Dale had a good number of ideas and I really started to see him progress through the course of that year. Again, I never thought it

would be short-lived. I thought the office was going to be there forever. Unfortunately, it was cut short, but I was really feeling good about the whole experience, to be quite honest with you, after a short period of time because I started to see a big improvement in Dale's attitude and thinking.

Q What kind of new ideas did he bring to you?

A I don't know if they were new ideas as much as they were -- I can sit here and give you a list that we tried this and that. I just saw a different attitude in him and when I needed something, he was there for me. He just seemed very sincere with me and any walls that were up in the beginning, I mean, we knocked them down very quickly, because I told [p.129] him it's me and you and we're going to run this thing. I gave him my pep up speech and I felt that he was communicating well with the customers. He had some bumps in the road, which was normal, but I thought he was progressing very nicely.

Q Did any customer complain to you that he wasn't seeing them as often as they would like?

A I never had a customer call me, I know that for a fact, and tell me that. I can't answer that question. I don't recall.

Q Do you recall any sales representatives complaining to you that Dale wouldn't get back to them with information that they needed to help them service an account?

A On occasion, Frank Resnick would complain a little in the past.

Q What was the nature of his complaints?

A I guess that it would take a little longer to get information from Dale sometimes. And when I went to Dale, Dale said, well, he didn't get the information from the labels, which didn't surprise me. It wasn't something I would get upset about

* * *

[p.164]

manager?

A As sales manager, no.

Q Have you ever asked anybody how he had done?

A No.

Q When you made your decision to offer Mr. Hill the field sales manager position in Philadelphia, did you consider him more effective as a sales manager than Pete Hagan had been?

A I can't answer that because I don't know how Pete was as a sales manager.

Q And what I hear you saying is, it didn't even enter your mind to consider Pete Hagan for that position?

A Correct.

Q And sitting here, you have no reason, other than the fact that it didn't enter your mind?

A Well, no, there were --

Q If I'm wrong, tell me.

A It didn't enter my mind to ask Pete because there was something that, you know, I did have a position open from September through December of '98, a sales manager [p.165] position, and Peter never asked me for an interview, he never expressed interest.

Q Slow down a minute. There was a position in September --

A When I let Pat Purcell go.

MR. SKIDMORE: I don't think he was done his answer.

BY MR. HORDES:

Q Go ahead.

A When you let Pat Purcell go, there was a period of time when that position was open.

Q Which Sue Costello took?

A Which Sue Costello took the job.

Q And you're talking about a period of time of September through?

A September through December of '98. I believe that's when Sue took the job in '98. Pete never expressed any interest in the job and never called me.

Q Did he know that the position was open?

A Oh, I'm sure he did.

Q How do you know that?

A Because all management usually -- I told all management about Pat Purcell leaving. As a matter of fact, the thing spread through our [p.166] industry. You don't get rid of a high level position like a sales manager without people knowing about it.

Q Aside from your supposition, do you have any specific recollection of telling Pete Hagan that there was a vacancy in the sales manager position in Philadelphia?

A No, I did not specifically sit down with Pete and tell him. I told Dale, but I didn't tell Pete.

Q Why did you tell Dale and not Pete?

A Because Dale was the head of the office and I would assume he would have mentioned something at his meetings.

Q Did you tell him to pass the word on to Pete?

A Yes. Well, not to Pete particularly. To the staff, yes. That was one of the reasons I never considered Pete. My impression of people, although I didn't have a lot of time to work with him, unfortunately, like I stated earlier, the window for Cleveland was short for me, but I understand that he was just an average employee. I understand, although. I did not talk to Lew

* * *

[p.182]

A Oh, yes.

Q What did you do in terms of filling that vacancy once Dale Hill turned it down?

A Well, we had already conducted interviews in Philadelphia for people who came forward from our branch office there and together Sue and I made a decision to bring Jeanne in, Jeanne White, who was a field sales manager for R & B music for the Philadelphia branch.

Q I guess Sue Costello did the interviewing; correct?

MR. SKIDMORE: Objection. Go ahead.

BY MR. HORDES:

Q For the position of field sales manager, the internal people, Jeanne White, I take it Sue Costello interviewed her, or not?

A Yes, she interviewed and I interviewed. We kind of both interviewed her, but Sue interviewed her, too.

Q Did that interview take place before or after Dale Hill turned you down?

A I don't recall. I can't even assume. I don't recall.

[p.183]

Q Would you ordinarily interview people for a position while you were still giving that position to somebody else?

MR. SKIDMORE: Objection; calls for speculation. Objection; hypothetical.

THE WITNESS: Can you phrase that differently?

BY MR. HORDES:

Q You said that you weren't sure whether Jeanne White, and others from Philadelphia, were interviewed for the field sales manager position.

A I think all the interviews were done. I don't know what date, though. I think they were all done.

Q They done by the time Dale Hill turned you down?

MR. SKIDMORE: Objection; asked and answered.

THE WITNESS: Yes, I think they were all done.

BY MR. HORDES:

Q When Dale Hill turned down the job, was there any thought to bringing Pete Hagan in and asking him whether he wanted the job now [p.184] that Dale turned it down?

A No, sir.

Q Why not?

A I think I already told you that.

Q You told me originally why you thought Dale was a better than Pete. My question to you now is: Now that Dale was out of the picture, did you then reconsider Pete?

A No, I didn't.

Q And the reason you did not reconsider Pete is because Dale Hill had said he was an average field service manager?

MR. SKIDMORE: That's one of the things he said.

BY MR. HORDES:

Q That's one of them. There had been some concerns raised by Camelot; correct?

A There was a concern that I heard through Dale and through label people about Camelot and Pete, yes.

MR. SKIDMORE: There were other things he's testified to.

THE WITNESS: Right. I mean, there were other things I had told you earlier.

[p.185]

BY MR. HORDES:

Q And you also noted that Pete never volunteered, even though he should have known about the job. And, he didn't show any interest in the job.

A He never showed any interest in the sales manager position that was open from a period of a couple of month before Sue got it, and he never showed me that he wanted -- he never told me personally that he wanted to move to Philadelphia or wanted to be transferred to Philadelphia. We never had that conversation.

Q Did you ever have any conversations with Pete Hagan, at all, about the desirability to transfer from one city to another?

A I don't recall Pete and I ever having a conversation like that.

Q Do you recall Pete being a party to a conversation with Pete Hagan, while you were in charge of Cleveland, where Pete Hagan expressed his willingness to transfer to other cities?

A I'm sorry. You'll have to repeat that.

Q While you were heading up the Cleveland [p. 186] office, do you recall being present in any conversation where Pete Hagan told you he was willing to transfer to other cities?

A I don't recall any conversations like that with Pete. I stated to you earlier conversations with Pete, when I would walk in, was in reference to Florida and his condo in Florida.

Q Did there ever open up a vacancy, that you're aware of, in Minneapolis for the position of sales manager or field sales manager while you were running Cleveland?

A I don't recall.

Q Do you recall offering Pete Hagan an opportunity to go to Minneapolis?

A No.

Q So, I gather then, when you and Ms. Costello were interviewing candidates for the field sales manager position in Philadelphia, the notion of considering Pete Hagan for that position, did that ever enter into your mind at that point in time?

A No, sir.

Q And when Jeanne White was promoted to field sales manager, that left a vacancy for a [p. 187] field sales manager of rhythm and blues in Philadelphia?

A Correct.

Q And in considering who to put in that position, did either you or Ms. Costello consider Pete Hagan for that position?

MR. SKIDMORE: Well, you can testify about what you thought, but you can't testify as to what she was thinking.

THE WITNESS: No, I never thought of Pete for that position.

BY MR. HORDES:

Q Did Ms. Costello consider Pete Hagan for that position?

MR. SKIDMORE: Objection.

THE WITNESS: I don't know.

BY MR. HORDES:

Q If you heard her.

A I have no idea.

Q When you decided to pick Jeanne White for the position as field sales manager of Philadelphia did her race plan any role in your decision?

A No, not at all.

Q She's African American; correct?

[p.188]

A Jeanne is, yes.

Q And Mary Ressner is African American as well; correct?

A Yes, she is.

Q When you were considering Ms. Ressner for the position of field sales manager of black music, did her race enter into your consideration?

A Not at all.

MR. HORDES: Will you mark this, please, Exhibit Twenty-three?

- - -

(Exhibit Twenty-three was marked for identification and received into evidence and is attached hereto.)

\- - -

BY MR. HORDES:

Q Let me know when you're finished with this.

A Yes, I will.

Q Have you seen that document before?

A Yes, I have.

Q And when did you first see that document?

A I don't recall.

* * *

[p.217]

hypothetical, calls for speculation. That's not what happened.

THE WITNESS: I agree with what David said. I don't know if I can give you an honest answer because I had already worked with Dale. I saw improvement in Dale. I had a different feeling with Dale than, apparently, Denny did.

BY MR. HORDES:

Q. During the time you were a branch manager, even before you took over the Cleveland office, were you aware of

any efforts by WEA home office to undertake steps to increase the representation of blacks and women in the management work force at WEA?

A Would you clarify "undertake steps" for me? I'm just a little unclear.

Q Let me back up and start with something else. During the time you were branch manager in Philadelphia, did the topic of increasing the representation of blacks and women in WEA's management ever become a topic of conversation with other WEA management?

A I was always told to hire the best person for the job, whether the person is [p.218] African American, a woman. It has to be the best person. Consider everyone. And that's pretty much the message that I grew up with in this company and the message I got from my superiors.

Q Understand. So, you never did hear anyone from WEA say: It's a good idea to have more blacks and more women than we have now in management positions?

MR. SKIDMORE: Objection; asked and answered.

THE WITNESS: I don't recall anyone ever saying that to me.

BY MR. HORDES:

Q. I'm going to show you what's already been marked as an exhibit in the Froio deposition as Exhibit Nine and ask have you seen this before?

A. No, sir, I've never seen this article before.

Q Do you know who Kevin Carney is?

A I know the name, but I just can't place it as of now.

Q Would it refresh your recollection if I told you he was the son-in-law of George [p. 219] Rossi?

A Son-in-law, no.

Q Excuse me. Stepson. I apologize. The stepson of George Rossi.

A Oh, okay. Then I know Kevin.

Q What role does Kevin play at WEA?

A I have no idea. I mean, I met him a couple of times at meetings, being introduced to him, but I don't even know if he is at WEA anymore. I have no idea.

Q Understanding that you have never seen this document before, do you recall being privy to any conversation, with WEA management, concerning Jessie Jackson's Rainbow Coalition?

A Never.

Q Aside from speaking to WEA management, did you ever learn from reading the media magazines, listening to television, whatnot, that Jesse Jackson's Rainbow Coalition was concerned about the lack of representation of blacks and women in management at the record companies and the record distribution companies?

MR. SKIDMORE: Assuming that to be [p. 220] true, go ahead.

THE WITNESS: To be quite honest with you, I don't recall hearing that. And it's funny, I don't know --

MR. SKIDMORE: You've answered the question.

BY MR. HORDES:

Q You can finish.

A I don't ever remember hearing that, no.

Q Is it your belief, as of the mid to late 1990's, that there was under-representation of blacks and women at WEA management?

MR. SKIDMORE: Objection; calls for speculation.

THE WITNESS: I have no idea.

BY MR. HORDES:

Q It's not a subject which entered your mind?

A Not at all.

Q Were you present at a 25th Anniversary Dinner in Anaheim, California which Dave Mount gave a speech?

A Yes, I was.

Q So, you were there for that speech?

A I was there at the meeting. I'm sure I

* * *

[p.232]

A Well, I'm proud to say that the Philadelphia branch had never won an award until we teamed up with Cleveland. And Cleveland/Philadelphia was such -- we won it twice in a row.

Q When?

A I believe it was '98 and '99, and I felt that the team overall, a team now, did a fantastic job, and that includes everybody on that team. Individually, we had work to do, but that's okay, as a team they were functioning and they did a wonderful job. Two years in a row, first time ever. It was a great, great honor.

Q Let me direct your attention to Plaintiff's Exhibit Twenty-two.

A Okay.

Q The planning memo. Mr. Milanese, you identified this previously as your planning memo for 1998.

A Yes.

Q And you gave observations about managers that you worked with.

A Backup, yes.

Q When did you make these observations?

* * *

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. C-1-00-412

[June 6, 2001]

PETER M. HAGAN,	)
Plaintiff,	)
	)
v.	)
	)
WARNER/ELEKTRA/ATLANTIC CORP.,	)
Defendant.	)
	)

EXCERPTS DEPOSITION OF
RICHARD L. FROIO

[p.108]

Q. So I gather you never promoted him to sales manager, he was already there?

A. Correct.

Q. How would you rate him as a sales manager?

A. He was a good sales manager.

Q. Did he have any particular strengths?

A. Yes.

Q. What were those strengths?

A. I think he did a good job. I mentioned earlier about the functions of a sales manager, number one sales, monitoring how well we were doing against our numbers. He was diligent in that regard, advertising which was a big part of his job, I thought he did a very good job advertising.

Q. Were there any particular weaknesses you noted in Mr. Hagan's performance?

A. Yes.

Q. What were they?

A. His people skills, personal skills, personnel skills.

Q. Can you elaborate on that?

[p.109]

A. I felt he needed work sometimes dealing with individuals who worked for him, his manner, the way he approached them, the way he motivated them and we talked about it many times.

Q. You advised him of what you thought he needed to do to improve?

A. Yes.

Q. How many meetings did you have with him in which --

A. I don't recall. We worked together four years. I'm sure numerous.

Q. What about his people skills did you find wanting? Is he too easy on people, too easy, to gruff?

A. Too abrupt, too gruff at times.

Q. I gather and correct me if I'm wrong, you have nothing in writing --

A. Oh, no.

Q. -- to memorialize any particular kind of counseling you gave Mr. Hagan?

A. No. It was verbal.

Q. Based on your input, did he improve?

[p.110]

A. Yes. I like to think I had something to do with that, yes, absolutely.

Q. Did he improve to the point where you no longer had to counsel him on this type of problem?

A. No.

Q. He continued to have the problem?

A. Well, less and less but he did improve, absolutely.

Q. And at the time let's say late '94 or early '95, how would you describe his improvement in this area?

A. Better than it was when I started in '91.

Q. If had to rate it and it may be difficult, but if you have sort of a spectrum of no improvement, zero improvement on the left-hand side and a hundred percent improvement on the right-hand side, I know that you can't quantify this exactly, but how far along that bar line would you say he was as of the end of 1994?

MR. SKIDMORE: Objection, the question is ambiguous. You can answer if you [p. 111] understand it.

A. No, I understand it. I certainly -- if zero is where he started, ten is where he would be perfect, no one is perfect, I certainly think he would be six or seven.

Q. Would you say the trend was up at the time you left as opposed to relapsing and going back down?

A. I would say the trend was up.

Q. When you say that you talk about his people skills as you described a little while ago, did you observe that firsthand?

A. Yes.

Q. As opposed to having people complain to you?

A. Both.

Q. Who complained to you about Pete Hagan?

A. I don't specifically remember the names. I mean again it was over four years, many people dealing with you dealt with a lot of individuals.

Q. Approximately how many people complained to you about Pete Hagan?

[p.112]

A. More than a handful.

Q. More than five?

A. I would say that.

Q. More than ten?

A. I don't remember.

Q. Were these both management and non-management people --

A. Yes.

Q. -- that were complaining?

A. Yes.

Q. When you say he was abrupt and gruff, were there complaints that he was yelling at people?

A. I don't recall that.

Q. How about using profanity in front of people?

A. I don't recall.

Q. How about physically if not assaulting them, were there any of those kind of complaints?

A. No, I don't recall that.

Q. Did you ever relay any of these concerns that you and about Pete Hagan to anyone higher up like Mr. Droz or Mr. Mount?

[p.113]

A. Yes.

Q. Tell us about that.

A. Again briefly every year we would do a planning memo. Not briefly, it was a major document, I guess. But in that memo I would write a little line -- two lines, paragraph on each manager. In those memos I would put in writing very effective, good number two man, needs help personnel skills.

Next year making improvement with personnel, that sort of thing. So that is -- that would go to the president of the company and George Rossi, Larry Weiss, Jack O'Connell, the people I had to turn it in to.

Q. Do you still have those planning memos at home?

A. Yes, these are the ones I mentioned earlier.

REQ MR. HORDES: I don't recall getting any planning memos from you. I do have a planning memo. I have independently. It doesn't mention Pete at all. I would ask that you provide them. I think -- I believe I had asked for any and all documentation, memos about Pete Hagan and you complied with a substantial

* * *

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. C-1-00-412

[July 10, 2001]

PETER M. HAGAN,	)
Plaintiff,	)
	)
v.	)
	)
WARNER/ELEKTRA/ATLANTIC CORP.,	)
Defendant.	)
	)

EXCERPTS DEPOSITION OF DAVID MOUNT

* * *

[p.61]

MR. HORDES: It is. It is in brackets.

Q. I guess that means that you didn't actually say "minority." They stuck it in. But I guess my question acknowledges that.

I guess my question to you is, what does "a goal" mean to you in terms of hiring women or minorities?

A. Well, I think the goal is to have the best possible work force you can have.

And to me, that means casting the net as widely as you can, which means that you don't put artificial barriers in place, that you recruit as widely as possible when you are filling positions. And to me, that's the goal.

The goal is to have a -- the best possible team you can put together. And that would include women, minorities.

Q. White people?

A. White people, absolutely. I'm one of them.

Q. And I gather -- and correct me if I'm wrong -- a goal does not include striving for a certain arithmetical percentage of work force being a certain category.

A. That's correct. It does not.

MR. SKIDMORE: Don, at some point, can I use another rest room break.

MR. HORDES: Off the record.

(A recess is taken.)

[p.62]

MR. HORDES: Could you repeat the last question.

(The record is read by the reporter.)

MR. HORDES:

Q. When you are quoted here as saying -- and I'm sort of midway through the last paragraph - "it is a goal to improve, and promote" -- "goal to improve," comma, "and promote" --

A. Uh-huh.

Q. -- well, again, bracket, "minority employees," you are indicating there you were not necessarily referring to minority employees, or do you think you really were?

A. Well, the whole article is about women and minorities, so I would guess that he characterized it that way for the article.

Q. But when you were quoted, you were thinking in your mind of both women and minorities?

MR. SKIDMORE: Objection. Mischaracterizes.

MR. HORDES:

Q. Well, I'm asking -- That was sort of a leading question. Let me just back off.

When you were talking about it being a goal to promote, did you have in mind minority employees and women or just minority employees?

A. I would have probably said something like [p.63] "promote broadly" or something like that.

But I -- You know, again, I don't remember this exact conversation I had with this person.

Q. Understood.

But I guess my question is, did you have in mind women and minorities or just --

A. Well, as I said, my own goal was to make sure we had the best work force possible. That means not having barriers.

Q. All right.

You also mention the word "promoting," so I guess you are talking about breaking down barriers to promotion of the best qualified people.

A. Yes.

Q. As well as hiring?

A. If that's what it takes to get the right people in the right job, correct.

Q. Then I am quoting further, quote, "As you go down each rung of the ladder [at WEA], you will see a pool of [minority] talent."

What were you trying to convey there?

A. Well, again --

MR. SKIDMORE: Objection. It speaks for itself.

THE WITNESS: Okay.

MR. SKIDMORE: But you can go ahead.

[p.64]

THE WITNESS: Well, again, I think my goal as a manager was to make sure that we were recruiting as broadly as possible at every level of the company. And that's what I was referring to.

MR. HORDES:

Q. Were you referring to a pool of -- says, bracket, "minority," end bracket, "talent."

What pool did you have in mind there, a pool of women, pool of minority?

A. Well, first of all, this "minority" was the reporter's word, not mine.

I may have just said --

Q. Right.

A. -- " a pool of talent." But the article was about women and minorities, so he was trying to make his point.

Q. Okay.

The last sentence of the article -- again, it's a quote of yours, at least the reporter is quoting you as saying this -- quote, "One of our goals is to make sure that we work the pool up the ladder," unquote.

Again, do you recall making that statement?

A. Not specifically.

Q. Do you recall telling the reporter that WEA was making an effort to -- Well, strike that.

[p.65]

Understanding, as you just said, that's not an exact quote, and I understand that -- I've been misquoted, too -- in your own words, what do you recall -- I know it's years later obviously. What do you recall saying in --

A. Well, if you just take out his words and you say, "As you go down each rung of the ladder, you see a pool of" -- "pool of talent," one of our goals is to make sure we work that pool up the ladder.

Cream rises to the top. You want to make sure you have the best people at every -- every stage of that promotion ladder.

Q. Without discriminating against anybody?

A. Exactly.

Q. Have you ever stated to anybody at WEA words to the effect that it is desirable to increase the representation of minority individuals into the ranks of management, or words to that effect?

A. You know, I don't recall specific comments.

But I think, again, one of my goals -- one of the goals I have had for the company is that we have a broadly diverse work force representing the best people we can for a particular job.

Q. Well, I'm not trying to spar with you. I'm really not. I hear you saying two different things.

One is you want a diverse work force, management

* * *

APPENDIX H

EXCERPT REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

EXHIBIT A

CATALOGUE OF MISSTATEMENTS OF FACT MISSTATEMENTS IN PLAINTIFF'S RESPONSE

- **Plaintiff's Response:**
  "In contrast to Sales Managers and Field Sales Managers, or Sales Representatives, specialty Field Sales Managers such as Field Sales Managers-Black Music have no sales function at all. Hill Depo. at 57." (p. 3)

  - **The Undisputed Facts:**
    This is simply not Dale Hill's testimony. *See* Hill Depo. at 52-59. Hill explained that as Field Sales Manager of Black Music, he worked with and supervised the Sales Representatives to increase sales. Schone also testified that Field Sales Managers of Black Music supervise the sales function, as do Field Sales Managers and Sales Managers, and Field Sales Managers of Black Music often actively participate in sales efforts. Schone Depo. at 162-63.

- **Plaintiffs Response:**
  Hagan cites Schone's deposition testimony at page 22, Froio's deposition testimony at pages 142-44, and Aliberti's deposition testimony at page 33 for the

proposition that the duties of Branch and District Sales Manager positions are virtually the same. (p.4)

- The Undisputed Facts:
  When the record is viewed in its entirety, it becomes very clear that this is not the substance of the witnesses' testimony. Although these witnesses did testify as to the similarities of the two positions, they also emphasized the significance of the additional administrative and personnel duties associated with being the Cleveland District Sales Manager, the top person in that office. Schone Depo. at 115-16; Froio Depo. at 142-43; Aliberte Depo. at 40-46.

- **Plaintiff's Response:**
  "As of Spring of 1995, Mr. Hagan led the entire sales effort from the Cleveland Branch Office ...." (p. 5)

  - **The Undisputed Facts:**
    This is simply not true. The Branch Manager was in charge of all of the functions within his respective branch office, including sales. Schone Depo. at 72; Froio Depo. at 69-70. Prior to 1995, Hagan was a Branch Sales Manager, the number two person in the Cleveland branch office. Hagan Depo. at 125-26, 141-42. As such, Hagan never "led the entire sales effort" of the Cleveland branch. That job was Rick Froio's as Branch Manager.

- **Plaintiff's Response:**
  "... WEA has always maintained a strict written policy addressing the need to engage in progressive discipline of any employee whose performance or attitude is found wanting." (p. 6)

- **The Undisputed Facts:**
  It is certainly true that WEA's Human Resource Department sent a memo to the Cleveland branch office explaining the concept of progressive discipline. Froio Depo. at 38. It is also true that Froio did not employ progressive discipline with his management staff. Froio Depo. at 43-44. Schone had never seen any memorandum regarding progressive discipline and did not employ it. Schone Depo. at 40-42.

- **Plaintiff's Response:**
  "...the front office of WEA in Los Angeles also never received from the Field news of anything critical about Mr. Hagan. Mount Depo. at 31-32." (p. 6)

  - **The Undisputed Facts:**
    It is true that Dave Mount, the CEO of WEA, could not recall getting any feedback on Hagan's performance, good or bad. Mount Depo. at 31. It is <u>not</u> true that WEA's "front office" never received from the Field anything critical about Hagan. For instance, Fran Aliberte, who was an Executive Vice President of Sales in WEA's California office, spoke to Lew Garrett who requested that Hagan not be put in charge of WEA's Cleveland office. Aliberte Depo. at 77. Aliberte heard a number of other complaints about Hagan during his tenure in WEA's home office, including complaints about Hagan's poor people skills, failure to follow up on sales figures, unoriginal marketing plans, and poor leadership. *Id.* at 56-63. Indeed, Aliberte spoke with Hagan on a number of occasions about some of these deficiencies, *Id.* at 66, 68-69.

- **Plaintiff's Response:**
  "All in all, Froio was very satisfied with Mr. Hagan's performance as his Branch Sales Manager, referring to him as his 'right hand.' (Froio Depo. at 117)" (p. 7)

  - **The Undisputed Facts:**
    Froio did view Hagan as a "good number two." Froio Depo. at 117. Froio also testified about Hagan's weaknesses. Froio Depo. at 108-09. It is also true that Froio recommended against Hagan becoming the top person in the Cleveland office after Froio's departure, in light of the lack of Hagan's leadership skills, and in light of the fact that Camelot asked that Hagan not be put in the top position. Froio Depo. at 164-65.

- **Plaintiff's Response:**
  "Mount embraced the sentiments expressed in the [March 26, 1994 article in Billboard Magazine]." (p. 8)

  - **The Undisputed Facts:**
    Mount explained that the quotation contained in the article was not what he said. Mount explained that WEA's goal is to create the best possible workforce. In order to achieve that goal, it was necessary to eliminate artificial barriers to recruitment and promotion of minorities. Mount repeatedly explained that WEA did not have quotas and was committed to hiring the best candidates without discriminating against anyone. Mount Depo. at 61-65.

- **Plaintiff's Response:**
  "Significantly, WEA headquarters representative Kevin Carney thought enough of this article [regarding Jesse Jackson and the music industry] to circulate it throughout WEA's branches." (p. 8)

- The Undisputed Facts:
  Kevin Carney was not even a WEA employee. He was an employee of Warner Brothers that simply had an office in WEA's Burbank, California facility. Hagan Depo. at 440-41. Apparently, Carney sent a copy of this article to Hagan. The decisionmakers with respect to Hagan had never seen this article and expressly rejected the comments made therein. Schone Depo. at 284-85; Milanese Depo. at 69.

- **Plaintiff's Response:**
  "WEA carefully monitored the racial composition of its workforce, keeping detailed records in the home office in Los Angeles as to the number of minorities, especially African-Americans, who occupied positions of management in the various districts and branches throughout the country at any given time." (p. 9)

  - **The Undisputed Facts:**
    WEA was required by government regulation to keep track of minorities and women in its employ. Arnold Depo. at 62; 41 C.F.R. § 60-2.1(b)(l)(i). There is no evidence whatsoever that WEA placed special emphasis on African-Americans, as implied by Hagan.

- **Plaintiff's Response:**
  "...WEA was secretly planning to replace him as Sales Manager. The impetus for this change originated in WEA's home office." (p. 12)

  - **The Undisputed Facts:**
    This is simply not the evidence. Schone and Froio interviewed prospective candidates at the Cleveland office where Hagan worked on a daily basis. Schone Depo. at 116-17; Froio Depo. at 145-46. As Schone

observed, "he would have had to be on another planet not to know about [the interviews]." In addition, there is no evidence that the impetus to interview candidates and promote Hill was from WEA's home office. Schone recalls speaking with Froio about needing "somebody in Cleveland that was strong, could be a leader, and be the number one person in Cleveland." Schone Depo. at 104. WEA home office executives, particularly Aliberte, were kept informed and made suggestions about potential candidates. Schone Depo. at 59, 62-63, 112-13. The fact that Froio learned about the interviewing process, itself, from WEA's home office does not mean that that the impetus for the interviewing came from home office. Froio Depo. at 154. In fact, the witnesses uniformly testified that Schone made the decision to interview various candidates. Schone Depo. at 104-05; Aliberte Depo. at 111-12.

- **Plaintiff's Response:**

"WEA's home office not only created the new position and decided to fill it by interviewing new candidates, but it also offered up the names of the individuals who it deemed should be considered for the new job." (p. 12)

- **The Undisputed Facts About the District Sales Manager Position:**

The District Sales Manager position was not "created" in 1995. The record reveals that the District Sales Manager position has been a part of the WEA's management structure since at least 1979, when Schone held the job title in WEA's Kansas City office. Schone Depo. at 20. Nor were the additional duties associated with the District Sales Manager position fabricated. All of the witnesses testified that there

were significant additional responsibilities associated with the position. Hagan Depo. at 125-26, 293-95, 326-27; Froio Depo. at 142-43; Aliberte Depo. at 132-34.

- **The Undisputed Facts About the Process:**
  Schone, together with Froio, decided who to interview. Schone certainly asked Aliberte (who worked in WEA's home office) who he might interview in addition to the people that Schone and Froio had already decided to interview. Schone Depo. at 59, 62-63, 112-13. This was Schone's normal procedure for hiring management because Aliberte, as the National Vice President of Sales, had knowledge about personnel throughout the country, whereas Schone's knowledge was more limited to the midwest. *Id.*

- **Plaintiff's Response:**
  "In the past, whenever Mr. Schone wanted to hire a sales manager, he took it upon himself to identify and interview candidates...This was the first time that WEA home office ever took the initiative to declare the names of the persons to be considered for the position." (p. 13)

  - **The Undisputed Facts:**
    This statement flatly contradicts the decisionmakers' description of the hiring process. Schone explained that he began the selection process by generating his own list of potential candidates based upon his interactions with and impressions of individuals who he worked with or in close proximity to. Schone Depo. at 112-13. Schone then checked with WEA's home office to see if there were other qualified candidates at WEA's other facilities around the

country. *Id.* at 59, 62-63, 112-13. Schone then conducted interviews from that cumulative list of candidates. This is the process that was employed in selecting Dale Hill.

- **Plaintiff's Response:**
  "... Mr. Hill had absolutely no sales experience at all at WEA." (p. 13)

  - **The Undisputed Facts:**
    This statement misrepresents Hill's experience before receiving the position in Cleveland. Prior to coming to Cleveland, Hill was a Field Sales Manager of Black Music in WEA's Atlanta office. In that capacity, Hill was responsible for the sales and marketing of urban music for the Warner, Elektra, and Atlantic labels. Hill Depo. at 52. Hill worked in conjunction with Sales Representatives to service Atlanta's account base, make product presentations to potential purchasers, create and monitor advertising campaigns, and otherwise attempt to maximize music sales in the Atlanta market. *Id.* at 52-62. The functions performed by the Field Sales Managers of Black Music were considered "sales" functions. Schone Depo. at 162-63. Hill also had sales experience at Turtle's Records. Hill Depo. at 17-21.

- **Plaintiff's Response:**
  "Also unparalleled in the history of WEA was the promotion of such a relatively low-level manager like Dale Hill to a top sales position in a district. Mr. Hill was basically leap-frogged two management levels to a top sales position without first serving in an apprenticeship as a sales representative or field sales manager." (p. 14)

- **The Undisputed Facts:**
  This assertion is wrong on two levels. First, the Field Sales Manager and Field Sales Manager of Black Music positions were equivalent; both reported directly to the Sales Manager. Schone Depo. at 52-52. Second, two-level advancements in management were not "'unparalleled." Milanese testified that four of the six Branch and District Sales Managers in the Philadelphia branch had come from significantly lower ranks in WEA's management. Milanese Depo. at 45-47. Also, Froio, who Hagan greatly respected, went from a position as a Field Sales Manager to being Cleveland's Branch Manager, a promotion over two management levels. Froio Depo. at 14.

- **Plaintiff's Response:**
  "Mr. Schone supposedly chose Dale Hill based on his sales experience in Atlanta." (p. 15)

  - **The Undisputed Facts:**
    Hagan's Response misstates the reasons that Schone proffered for selecting Hill. Schone testified that the person selected for the Cleveland District Sales Manager position had to be a leader that could help lift the Cleveland office out of its downward slide. Schone Depo. at 104, 153. Schone knew that Hill had done an excellent job in his position as a Field Sales Manager of Black Music in Atlanta, that Hill had a good knowledge of WEA's product, and that Hill had demonstrated an ability to rally sales personnel to achieve their goals. Schone Depo. at 151-52; Aliberte Depo. at 116, 217. Hill also exhibited the desire and passion for the position that Schone was looking for. Hill had turned down a number of opportunities with WEA's competitors and associated record labels in

order to take the Cleveland District Sales Manager position. Schone Depo. at 130-31, 149-51.

- **Plaintiff's Response:**
"Dale Hill turned out to be an absolute disaster in all aspects of his job performance as Sales Manager during his four-year tenure in Cleveland." (p. 16)

  - **The Undisputed Facts:**
This is a wild exaggeration of the facts. It is true that Hill had some performance problems during his first year and a half on the job in Cleveland. Schone Depo. at 207-08. It is also true that Schone believed that Hill significantly improved his performance. *Id.* at 238, 250-51. By the time, responsibility for the Cleveland office was transferred to Ray Milanese in Philadelphia, Schone believed that Hill was performing within expectations. *Id.*

    Milanese testified that he "thought the world of Dale Hill." Milanese Depo. at 128, 133-34. Under Hill's leadership, the Cleveland office helped the Philadelphia branch win WEA's Branch of the Year Award for the first time. *Id.* at 231-32. Milanese also testified that he received fewer complaints about Hill's performance than he did about other managers. *Id.* at 133-34.

- **Plaintiff's Response:**
"Ray Milanese had his own problems with Dale Hill. Susan Witt made another allegation of harassment by Dale Hill and threatened Milanese with a civil lawsuit against WEA. (Witt depo. at 259-264; Milanese Depo. at 112-13). Again, as before, Hill by his own admission was never made aware of these complaints by Susan Witt.

(Hill Depo. at 189). Ray Milanese also noticed shortcomings in Dale Hill's performance. (Milanese Depo. at 171-73)." (p. 19)

- **The Undisputed Facts:**
  Witt, a Shipping and Receiving Clerk, testified that she complained that Hill had yelled at her after she refused to process and ship a WEA mailing. Witt Depo. at 44-45. Milanese recalls that he spoke to Witt briefly about her allegations and referred her to WEA's HR Department. Milanese recalled no further problems. Milanese Depo. at 114-16, 18. It is also true that Milanese received fewer complaints about Hill than he did about other managers, *Id.* at 133-34.

- **Plaintiff's Response:**
  "WEA's refusal to offer Pete Hagan the position of Field Sales Manager or Field Sales Manager of Black Music in Philadelphia also ran contrary to WEA's long-established policy of "bumping" managerial individuals to the next lowest managerial position rather than laying them off during a downsizing." (p.21)

  - **The Undisputed Facts:**
    There is no evidence that a "bumping policy" existed at WEA. None of the WEA executives that were involved in the challenged decisions were aware of such a "policy." Schone Depo. at 48-49; Froio Depo. at 48-49; Milanese Depo. at 38-39. Hagan has not presented any written documentation verifying the existence of such a policy, nor has anyone in WEA's management ever told Hagan that such a policy exists. Hagan Depo. at 427.

- **Plaintiff's Response:**
  Hagan was offered "a consultancy agreement, in which Mr. Hagan would be given the title of 'Sales Advisor' for a finite term from June 1, 1999 through December 31, 2000. He would be paid $4,000 per month ($48,000 annualized), but would not be provided a WEA office, nor a home office set-up, or paid vacation time." (p. 22)

  - **The Undisputed Facts:**
    Hagan has left out an important fact about the consulting agreement that he was offered. Under that agreement, Hagan was only required to work a maximum of 10 hours per month. Hagan Depo. at 54, Def. Exh. 5 (Supp. App., Exh. F).

- **Plaintiff's Response:**
  Hagan was offered "[a] classic severance package in which he would be given $152,500 in exchange for a total release of his claims." (p. 23)

  - **The Undisputed Facts:**
    The enhanced severance package offered to Hagan when Cleveland closed was worth far less than $152,500. Hagan Depo. at 54, Def. Exh. 5 (Supp. App., Exh. F).

- **Plaintiff's Response:**
  "Pete Hagan has adduced other circumstantial evidence upon which a reasonable jury could rely to conclude that the defendant was motivated by it illegal affirmative action plans, and no other reason." (p. 27)

  - **The Undisputed Facts:**
    All of the decisionmakers in this case testified that their respective decisions were not made pursuant to WEA's

affirmative action plan and that race and sex played absolutely no part in those decisions. Schone Depo. at 42-43, 177-78; Milanese Depo. at 187-88, 217-18, Costello Depo. at 7, 9.

- **Plaintiff's Response:**
"...for the first time, home office took the lead in pushing Dale Hill as a primary candidate for the Sales Manager's job. Schone admitted that he didn't want him." (p. 31)

  - **The Undisputed Facts:**
This was not, by any means, the first time that Schone contacted home office regarding names of potential candidates. As discussed above, Schone's normal process for hiring was to compile a list of potential candidates based on his own experience and then to contact home office to see if there were any other possible candidates in WEA's other offices around the country. Schone Depo. at 59, 62-63, 112-13. Nor did WEA's home office "push" for Dale Hill's selection. Schone was never told who to interview or select and had never had his selection overturned by WEA's home office. *Id.* at 58-59, 62-63.

- **Plaintiff's Response:**
"Finally, the interviewing supervisors in the instant case... did not fully review the qualifications of minority promotee, Dale Hill... Schone admits that he did not review Dale Hill's personnel file prior to hiring him. Nor was he terribly interested in Dale's sales or advertising experience. Froio's interview of Hill was, as noted earlier, also perfunctory. He did not even review his personnel file. As to why he chose Dale Hill, the only thing he could think of was that Hill was involved in youth activities in the Atlanta community." (p. 31)

- **The Undisputed Facts:**
  This is a mischaracterization of the record evidence. Schone was generally familiar with the functions and responsibilities that Hill had as a Field Sales Manager of Black Music in Atlanta. Schone Depo. at 162. Schone spoke with Bill Biggs, Hill's immediate supervisor, regarding Hill's qualifications and performance in his previous job. Schone and Froio interviewed Hill and discussed their impressions of him in relation to the other candidates after all of the interviews were complete. *Id.* at 120, 122-23, 148-49.; Froio Depo. at 160-61. It is true that Schone did not review Hill's personnel file, but he never reviewed personnel files before hiring any candidates. Schone Depo. at 64-65. For his part, Froio participated in the interviews and discussions with Schone. Froio Depo. at 160-61. Although Froio did not recall many of the particulars of the interviews, he did recall that Hill presented himself very professionally and expressed a strong interest in the job. *Id.* at 172. Overall, Froio found Hill to be "very impressive." *Id.*

- **Plaintiff's Response:**
  "There is nothing particularly unusual about liberal white executives trying to bring in more blacks and minorities into the workforce ...." (p. 32)

  - **The Undisputed Facts:**
    There is nothing in the evidence about the political persuasion of any of WEA's executives.

- **Plaintiff's Response:**
  "...Pete Hagan credibly testified that the theme of the party was 'The Decadent 1940's,' and Pete Hagan thought

the height of decadence was Adolph Hitler so he dressed up as a Nazi." (p. 36)

- **The Undisputed Facts:**
  Despite Plaintiff's mischaracterization of the record, Hagan's decision to dress up as Hitler was not innocently made. Although Hagan contends that the function that he wore the costume to was a "Decadent 40's" party, Hagan's own deposition testimony indicates that it was a "Decadent *Decades*" party. Hagan Depo. at 9, 13. Of all the people from all of the decades that Hagan could have chosen, he decided to dress up like Hitler for a party attended by WEA's customers and hosted by a Jewish woman. As Schone noted, this constituted extremely poor judgment on Hagan's part. Schone Depo. at 160.

- **Plaintiff's Response:**
  "Ultimately, everyone got a good laugh out of the costume." (p. 36)

  - **The Undisputed Facts:**
    It is undisputed that Schone did not find Hagan's wearing of a Nazi uniform to be funny. Schone thought that it demonstrated poor leadership and judgment. Schone Depo. at 160.

- **Plaintiff's Response:**
  "It is not true, as WEA argues in its brief, that Mr. Hagan 'remained the No. 2 person in the Cleveland office.'" (p. 41)

  - **The Undisputed Facts:**
    Hagan's own deposition testimony reads as follows:

Q: You remained the number two person in the [Cleveland] office?

A: Correct.

Hagan Depo. at 255.

APPENDIX I

EXCERPT
AFFIRMATIVE ACTION PLAN
AS OF 3/31/97

EXHIBIT L

WARNER/ELEKTRA/ATLANTIC CORPORATION
1 WARNER COURT
BRIDGEPORT, NJ 08014

PURPOSE AND POLICY

A. Purpose of Affirmative Action Program

This is the Affirmative Action Program for Warner Elektra Atlantic Corporation at 1 Warner Court, Bridgeport, NJ 08014. It is a specific results-oriented procedure to which the Company has been and is committed. It is designed to coordinate the Company's efforts to maintain equal employment opportunity.

B. Equal Employment Opportunity Policy

It is the policy of the Company to hire well qualified people to perform the tasks necessary to accomplish its central purpose, ie, distribution of recorded entertainment and related products An integral part of this policy is to make all employment decisions without discrimination because of race, religion, color, national origin, sex, marital status, or age and

to advance the hiring and employment of qualified handicapped persons, disabled veterans and veterans of the Vietnam era through positive recruitment programs.

Decisions concerning employment will be based on the individual's qualifications as they relate to the requirements of the position under consideration. The phrase "employment decision" includes recruitment, hire, promotion, compensation, benefits, transfers, discipline, terminations (including layoffs), recalls and training (including apprenticeships).

It is also the Company's policy to advance the hiring and employment of qualified handicapped persons. Employment decisions, as that phrase is described above, will be based on the job requirements of the position and the ability of the Company to make reasonable accommodations for the physical or mental limitations of the individual.

In addition, it is the policy of the Company that local state and federal laws and regulations implementing equal employment opportunity objectives shall be fully complied with.

C. The Objective

The objective of this Equal Employment Policy is to avoid discrimination in employment and to establish a workforce profile with respect to race and sex which is an approximate reflection of proper "utilization"*,

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* Nothing contained in this Affirmative Action Program, including the use of the terms "utilization", "problem areas",

and to advance the hiring and employment of qualified handicapped persons, veterans of the Vietnam era and disabled veterans.

Achieving this objective calls for a continued good faith effort to reflect full utilization of minorities and women at all levels of employment; to prohibit discrimination in employment because of race, color, sex, marital status, religion, age, handicap, veteran status, or national origin; and to provide a work environment free of discrimination.

The major thrust of the Company's efforts to achieve this objective is through the Affirmative Action Program. A key objective of this program is to set goals and timetables and to achieve them in those areas in which "underutilization" of women and minority group persons exists. Additionally, we attempt to identify handicapped persons, disabled veterans, and veterans of the Vietnam era. If an applicant or an employee is handicapped or a disabled veteran, the Company will attempt to make a reasonable accommodation, where necessary.

The Company uses its best efforts to assure the full realization of the stated objectives through a continuous procedure of monitoring and reporting.

"goals", and "timetables" shall be interpreted as an admission that Warner Elektra Atlantic Corp has been, or is in violation of any Federal or State law or Executive Order. To the contrary, the Company has always sought to provide equal employment opportunity to all persons regardless of race, color, religion, sex, marital status, age, or national origin.

D. Reaffirmation

This document represents a reaffirmation of the Company's policy and practices to make all employment decisions without discrimination because of race, religion, color, national origin, sex, marital status, or age and to advance the hiring and employment of qualified handicapped persons, disabled veterans and veterans of the Vietnam era through positive recruitment programs.

APPENDIX J

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 02-3602

PETER M. HAGAN, Plaintiff-Appellant,	)
v.	)
WARNER/ELEKTRA/ATLANTIC CORPORATION, Defendant-Appellee.	)

ON APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. C-1-00-412

EXCERPTS
FINAL BRIEF OF PLAINTIFF-APPELLANT,
PETER M. HAGAN, JR.

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Attorney for Plaintiff-Appellant, Peter M. Hagan, Jr.

I. STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

Pursuant to 28 U.S.C. § 1331, the District Court below had original jurisdiction over Plaintiff-Appellant's claim of race and sex discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as well as Plaintiff-Appellant's claim of age discrimination in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*, as these issues present federal questions.

Pursuant to 28 U.S.C. § 1367, the District Court had supplemental jurisdiction over Plaintiff-Appellant's pending state claims.

This Court's jurisdiction in these proceedings derives from 28 U.S.C. § 1291. The District Court's granting of Defendant-Appellees' Motion for Summary Judgment constitutes a final order which disposes of all claims with respect to all of the parties.

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the lower court erred in finding that Mr. Hagan had failed to adduce sufficient direct evidence of reverse race discrimination by his employer when it demoted him and replaced him with a less qualified minority individual and later offered to lesser qualified minority individuals opportunities for transfer to open managerial positions elsewhere in the company, without first offering those opportunities to Mr. Hagan.

2. Whether the lower court erred in imposing on Mr. Hagan a modified and more onerous burden of making out a *prima facie* case of reverse race discrimination.

3. Whether the lower court erred in finding that Mr. Hagan failed to establish a *prima facie* case of reverse race discrimination because he did not present background circumstances indicating that his employer was that unusual employer who discriminates against the majority.

4. Whether the lower court erred in finding that Mr. Hagan and the lesser qualified minority employees who were treated more favorably than he were "similarly-situated".

5. Whether the lower court erred in finding that his employer's demotion of him and later refusal to consider him for transfer to open managerial positions for which he was qualified amounted to adverse employment decisions.

6. Whether the lower court erred in failing to apply the correct legal standards in finding that Mr. Hagan had failed to make out a *prima facie* case of age discrimination.

APPENDIX K

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. C-1-00-412
(Judge Weber)

[December 21, 2001]

PETER M. HAGAN, Plaintiff,	)
v	)
WARNER/ELEKTRA/ATLANTIC CORP., Defendant.	)

EXCERPT OF PLAINTIFF'S MEMORANDUM CONTRA DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant's selective citation to limited facts in the vast documentary and testimonial record of this case[1] does not

[1] The parties took 18 depositions in 7 cities across the country, totaling approximately 4000 pages. Over 100 exhibits were introduced by each side.

begin to describe what happened to Plaintiff Peter Hagan at the hands of Defendant Warner/Elektra/Atlantic Corporation (herein "WEA") to further its improper race-biased agenda. Mr. Hagan a 49 year old Caucasian man who gave WEA 21 years of faithful and successful service as a sales executive for WEA. (See EEOC Charges, attached to Plaintiff's Complaint). His career was suddenly undermined in 1995 when he was demoted so that a patently unqualified young African-American male, Dale Hill, could take his place. Hagan's career disintegrated altogether four years later in 1999, when, in the face of an office closure, he was denied the opportunity to transfer to another management position within the company for which he was clearly qualified, while the same position was offered to the less qualified and less experienced Dale Hill. While federal law allows private employers some leeway in encouraging and fostering the hire and advancement of qualified minorities, it does not allow them to run roughshod over the

* * *

[p.40]

833, 842 (7th Cir. 1996). ("Persons of any age are capable of practicing age discrimination.")

Defendant further argues that it is entitled to summary judgment because Pete Hagan himself testified in his deposition that he wasn't officially sure why he was terminated, and that it was only his "gut reaction" that the defendant harbored animus against him because of his race. However, the mere subjective feelings of Pete Hagan, a layman, are irrelevant. Mr. Hagan is not a lawyer. He has no grasp of the evidentiary nuances of discrimination law such as the *McDonnell Douglas* burden shifting formula. It also bears

mentioning that Hagan offered this testimony rather early on in litigation, before he had an opportunity to hear and evaluate all of the testimony and documents offered up by WEA. *Chappel v. GE Products Corp.* cited by defendant in its memorandum in support of summary judgment is not on point. In *Chappel,* the only evidence that plaintiff offered in support of his case of employment discrimination was statistical evidence that was so sketchy and unpersuasive as to constitute "mere conjecture, personal belief." In contrast to *Chappel,* Mr. Hagan adduced a substantial quantity of evidence, both direct and circumstantial, over and above his own personal belief he was discriminated against on the basis of race.

WEA next argues that Mr. Hagan's allegations of unequal treatment in 1995 are time-barred. WEA is correct to the extent that plaintiffs *federal* claims of reverse race discrimination or for that matter, age and sex discrimination, are untimely. However, these very same claims were filed as violations of Ohio's anti-discrimination statute, Chapter 4112 of the Ohio Revised Code. These allegations were timely filed.

APPENDIX L

Declaration of Dennis Schone

Exhibit N

[November 12, 2001]

Pursuant to 28 U.S.C. § 1746, I swear to the following:

1. I am currently a Vice President of Sales and Marketing, Midwest Region (formerly termed "Branch Manager") for Warner/Elektra/Atlantic Corp. ("WEA") in its Chicago branch office.

2. In approximately 1986, Mike Spence, the Cleveland Branch Manager, told me that he was considering promoting Peter Hagan. In response, I told Mike Spence that I felt that Hagan did an okay job as a Sales Representative, but that I did not feel he was management material.

3. I know Ron Hewlett. Ron Hewlett was working as the District Sales Manager in WEA's Detroit sales office when I took over responsibility for what was previously the Cleveland branch in the spring of 1995. This included responsibility for WEA's Detroit sales office. Hewlett continues to this day to be responsible for WEA's Detroit office. Hewlett is a white male and is approximately 56 years old.

4. I know Lew Garrett. Garrett is a white male, and I estimate him to be in his mid to late 40's.

5. Prior to the closing of WEA's Cleveland office in 1999, Patti Fullard was employed in the Cleveland office as a Field Sales Manager of Black Music. After Camelot closed its operations based in Canton, Ohio, the great majority of accounts serviced by Fullard were located in Detroit, Michigan. When the Cleveland office was closed in 1999, Fullard's base of operations was transferred to Detroit.

6. Fullard's move to Detroit in 1999 did not displace any other WEA employee. She continued with her job, but it was based out of Detroit, rather than Cleveland.

I declare under penalty of perjury that the foregoing is true and correct.

Executed On: 11/12/2001 /s/ _____
Dennis Schone